

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

ARTHUR T. WATSON,

Plaintiff,

V.

ALABAMA FARMERS COOPERATIVE, INC.,)
d/b/a BONNIE PLANT FARMS,)

Defendant.

**CIVIL ACTION NO.
CV-2007-520-WHA**

DEFENDANT BONNIE PLANT FARMS'
EVIDENTIARY SUBMISSION IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT

COMES NOW defendant Alabama Farmers Cooperative d/b/a Bonnie Plant Farms ("Bonnie Plant" or "Bonnie") and submits its evidentiary submission in support of its Motion for Summary Judgment filed contemporaneously herewith.

Exhibit 1	Deposition of Charlie Trussell
Exhibit 2	Deposition of Adam Alley
Exhibit 3	Deposition of Les Branum
Exhibit 4	Deposition of Tate Gatlin
Exhibit 5	Deposition of Joe Stuart
Exhibit 6	Deposition of Plaintiff
Exhibit 7	Route Salesman Job Description
Exhibit 8	Plaintiff's Spring 2004 Commission Sheet
Exhibit 9	Luther Stuart's Spring 2003 Commission Sheet
Exhibit 10	Plaintiff's Spring 2005 Commission Sheet
Exhibit 11	Les Branum's Spring 2006 Commission Sheet

Exhibit 12 Les Branum's Spring 2007 Commission Sheet
Exhibit 13 Deposition of Joey Padgett
Exhibit 14 01/10/06 Letter
Exhibit 15 02/02/06 Letter
Exhibit 16 Declaration of Tina Johnson
Exhibit 17 Plaintiff's EEOC Charge

Respectfully submitted,

s/ Graham Gerhardt

Dent M. Morton (MOR058)

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been electronically filed with the Clerk of the Court using the CM/ECF system on the following CM/ECF participants, on this the 26th day of June, 2008:

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s/ Graham Gerhardt _____
OF COUNSEL

**DEFENDANT ALABAMA FARMERS COOPERATIVE,
INC. D/B/A BONNIE PLANT FARMS**

EX. 1

TO EVIDENTIARY SUBMISSION

In The Matter Of:

ARTHUR T. WATSON

v.

ALABAMA FARMERS COOPERATIVE, INC., ET AL.

NO. 2:07-CV-520-WHA

CHARLIE TRUSSELL

April 1, 2008



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ARTHUR T. WATSON
ALABAMA FARMERS COOPERATIVE, INC., ET AL.

CHARLIE TRUSSELL
April 1, 2008

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IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CIVIL ACTION NO. 2:07-CV-520-WHA

ARTHUR T. WATSON,
Plaintiff,

vs.

ALABAMA FARMERS COOPERATIVE, INC.,
D/B/A BONNIE PLANT FARMS,
Defendants.

VIDEO DEPOSITION
OF
CHARLIE TRUSSELL
April 1, 2008

REPORTED BY: Eleanor S. Pickett
Certified Shorthand Reporter
and Notary Public

A P P E A R A N C E S

FOR THE PLAINTIFF:

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FOR THE DEFENDANT:

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STIPULATION

IT IS STIPULATED AND AGREED,
by and between the parties, through their
respective counsel, that the video
deposition of CHARLIE TRUSSELL may be
taken before Eleanor S. Pickett,
Commissioner, Certified Shorthand Reporter
and Notary Public;

That the signature to and
reading of the deposition by the witness
is waived, the deposition to have the same
force and effect as if full compliance had
been had with all laws and rules of Court
relating to the taking of depositions;

That it shall not be necessary
for any objections to be made by counsel
to any questions, except as to form or
leading questions, and that counsel for
the parties may make objections and assign
grounds at the time of trial, or at the
time said deposition is offered in
evidence, or prior thereto.

I, Eleanor S. Pickett, a
Certified Shorthand Reporter of
Birmingham, Alabama, and a Notary Public
for the State of Alabama at Large, acting
as Commissioner, certify that on this
date, as provided by the Federal Rules of
Civil Procedure of the United States
District Court, and the foregoing
stipulation of counsel, there came before
me at the law offices of Burr & Forman
LLP, 3400 Wachovia Tower, Birmingham,
Alabama, on April 1, 2007, commencing at
1:16 p.m. 1:15 p.m., CHARLIE TRUSSELL,
witness in the above cause, for oral
examination, whereupon the following
proceedings were had:

MR. ROBERSON: This is the
videotape deposition of Charlie Trussell.
Today is April 1st, 2008. We are at the
law offices of Burr & Forman at 420 North
20th Street, Birmingham, Alabama. My name
is Jerry Roberson. I'm the attorney for

1 (Pages 1 to 4)

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1 the plaintiff, Arthur T. Watson. This
2 case is pending in the United States
3 District Court for the Middle District of
4 Alabama, Northern Division, styled Arthur
5 Watson, plaintiff, versus Alabama Farmers
6 Cooperative, Inc., doing business as
7 Bonnie Plant Farms, defendant, CV2-07-520.
8 I would ask all counsel of record to state
9 their name and the party they represent.
10 MR. GERHARDT: Graham Gerhardt
11 with Burr & Forman representing the
12 defendant.
13 MR. TRUSSELL: Charlie
14 Trussell.
15 MR. ROBERSON: All right. Our
16 deponent. And if you would swear our
17 witness, please, ma'am.
18
19 CHARLIE TRUSSELL,
20 having been first duly sworn, was examined
21 and testified as follows:
22
23 THE REPORTER: Usual

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1 don't nod your head and don't say uh-huh
2 or huh-uh, which we do all the time in
3 normal conversation. Is that fair?
4 A. That's fair.
5 Q. And then I'm going to ask you
6 questions. If you don't understand what
7 I'm asking, please tell me and I'll try to
8 rephrase it. Okay?
9 A. Okay.
10 Q. If you answer it, I'm going to
11 have to assume that you understood what I
12 was asking. Okay?
13 A. Okay.
14 Q. All right. You understand
15 that you're under oath today, correct?
16 A. That's right.
17 Q. Just like you were in the
18 courtroom?
19 A. That's correct.
20 Q. Okay. Now, Charlie, how old
21 are you?
22 A. Sixty-six.
23 Q. Where do you work?

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1 stipulations?
2 MR. ROBERSON: Yes.
3 MR. GERHARDT: That will be
4 fine.
5
6 EXAMINATION BY MR. ROBERSON:
7 Q. Mr. Trussell, my name is Jerry
8 Roberson. I represent -- it's Terry
9 Watson, what he goes by. He's the
10 plaintiff in this case. Do you know
11 Terry?
12 A. Yes.
13 Q. How long have you been knowing
14 him?
15 A. Off and on, probably twenty
16 years.
17 Q. And have you ever given a
18 deposition before?
19 A. No, sir.
20 Q. Let me tell you today, I know
21 you have counsel here, but today I'm going
22 to be asking you some questions. And I
23 need you to answer out audibly, that is,

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1 A. Bonnie Farms.
2 Q. And that's the company that
3 sells plants, correct?
4 A. That's correct.
5 Q. Do they sell anything besides
6 plants?
7 A. That's it.
8 Q. I mean, and by plants, I mean
9 they sell vegetables, correct?
10 A. That's correct.
11 Q. And they also sell shrubs or
12 flowering plants, correct?
13 A. That's correct.
14 Q. So if I go to Lowe's or Home
15 Depot and I pick out some plants, those
16 are probably from Bonnie Plant, correct?
17 A. More than likely.
18 Q. Okay. And those are just some
19 of your customers, correct?
20 A. That's correct.
21 Q. Now, how long have you been
22 working for Bonnie Plant?
23 A. Oh, about fifty years, all my

2 (Pages 5 to 8)

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1 life.
2 Q. Okay. Well, did you work for
3 somebody else before and they were
4 acquired by Bonnie Plant?
5 A. That's correct.
6 Q. Okay. Who did you work for
7 before?
8 A. I worked with Bonnie and then
9 I worked for Four Way Plant Farm which was
10 owned by my family, and we merged with
11 Bonnie about '90, '89, '90, something, I
12 can't remember -- '97, excuse me.
13 Q. So you grew up in a family
14 business?
15 A. Business, plant business all
16 my life.
17 Q. Four Way Plant Farms?
18 A. Bonnie Plant Farm. I was
19 originally with Bonnie.
20 Q. Okay.
21 A. And we withdrew from Bonnie
22 and started our own business, and we
23 merged back together and been there ever

1 Q. Okay. He's not the one --
2 A. That's his daddy.
3 Q. Okay.
4 A. Sam Waters, Glenn Paulk.
5 Q. I'm sorry, Glenn?
6 A. Glenn Paulk.
7 Q. Now, are all those people that
8 you named, are they still -- are they with
9 Bonnie?
10 A. No, they are all retired.
11 Q. Okay. Pete's retired?
12 A. Retired.
13 Q. And John Waters is retired?
14 A. Retired.
15 Q. And Sam and Glenn retired?
16 A. Retired.
17 Q. So you are the only one left?
18 A. I'm the only one left.
19 Q. Okay. Now --
20 A. Tim's left.
21 Q. Tim?
22 A. Yeah.
23 Q. Is that your brother?

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Page 12

1 since.
2 Q. Where was Four Way located?
3 A. Union Springs, Alabama.
4 Q. All right. Down in Bullock
5 County?
6 A. That's correct.
7 Q. And who started that business
8 besides yourself? Did you have any
9 partners or anybody in with you?
10 A. In?
11 Q. Four Way.
12 A. My brothers -- my brothers and
13 my uncles.
14 Q. Tell me who those people, what
15 their names, are if you would, your
16 brothers.
17 A. Pete Trussell.
18 Q. Okay.
19 A. John Waters.
20 Q. Now, there is a John Waters
21 who's a lawyer down there in Union
22 Springs.
23 A. That's my first cousin.

1 A. Yeah, younger brother. He was
2 with Four Way too.
3 Q. Okay. Where does Tim work?
4 A. Bonnie.
5 Q. I mean what city is he located
6 in?
7 A. Union Springs.
8 Q. Okay. So he works in an
9 office down there?
10 A. Uh-huh.
11 Q. Is that yes?
12 A. Yes, yes.
13 Q. I'll try to remind you.
14 A. Yes.
15 Q. And where do you work, sir,
16 now, where are you located?
17 A. Donaldsonville, Louisiana.
18 Q. Sir, I don't know much about
19 Louisiana. Can you tell me where that
20 city is located?
21 A. It's on the West Bank halfway
22 between Baton Rouge and New Orleans. West
23 side of the river. They call it the West

3 (Pages 9 to 12)

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1 Bank down there.
2 Q. Okay. And how long have you
3 been working for Bonnie down in
4 Donaldsonville?
5 A. This is the third season.
6 Q. And this business, the plant
7 business, is a seasonal business, correct?
8 A. That's correct.
9 Q. Now, the people that work,
10 that sell for Bonnie work -- sometimes
11 they work a spring season and sometimes
12 they work a fall season, correct?
13 A. That's correct.
14 Q. Do you have year-round
15 employment with Bonnie, or do you work
16 seasonally too?
17 A. I work year-round.
18 Q. Okay. And what is your
19 position with Bonnie?
20 A. Station manager for
21 Donaldsonville.
22 Q. Mr. Trussell, can you explain
23 what a station manager does?

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1 A. I oversee growing and seeding
2 plants and manage the salesmen and the
3 helpers of the routes.
4 Q. Okay. Now, is there a station
5 in Donaldsonville?
6 A. That's correct.
7 Q. So does that mean you grow
8 plants there?
9 A. That's correct.
10 Q. All right. And do you have
11 some office staff that is at
12 Donaldsonville or near there?
13 A. Yeah, my wife is the office
14 manager there. We stay there.
15 Q. Okay. And when you say -- the
16 plants have to be grown or put in
17 containers to be sold, to grow and be
18 sold, correct?
19 A. That's correct.
20 Q. And you -- you are in charge
21 of the actual physical growing of the
22 plants?
23 A. That's correct.

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1 Q. Do y'all have a greenhouse
2 down there?
3 A. That's correct.
4 Q. Okay. And you just have -- it
5 may be several greenhouses?
6 A. It is.
7 Q. Okay. And so what do you call
8 the people who work in that greenhouse in
9 the seeding and growing stage?
10 A. Greenhouse labor.
11 Q. Okay. And how many folks do
12 y'all have that work down there, just
13 average, a range of people?
14 A. Five.
15 Q. And do they just work a season
16 too, that is, a growing season?
17 A. They just work during the
18 growing season.
19 Q. And for Donaldsonville, the
20 growing season I assume is like the -- is
21 like the sales season in that it varies by
22 your location?
23 A. That is correct.

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1 Q. So what is your growing season
2 down in Donaldsonville normally?
3 A. From December to July.
4 Q. Okay.
5 A. And from August to November.
6 Q. And the August to November,
7 would that be for the fall season?
8 A. That's correct.
9 Q. And the December to July would
10 be the spring season?
11 A. Right on.
12 Q. Okay. Now, other than your
13 greenhouse labor and your wife, are there
14 any other employees for Bonnie that work
15 out of Donaldsonville?
16 A. Four salesmen, four route
17 helpers.
18 Q. So does that mean that you
19 have four routes in Donaldsonville.
20 A. Four routes we run out of
21 there.
22 Q. In terms of the geography,
23 where do your routes run?

4 (Pages 13 to 16)

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1 A. The Baton Rouge area, the New
2 Orleans area and the Lafayette area,
3 southwest Louisiana.
4 Q. Okay. Then are you part of
5 a -- if we go up, are you part of a
6 certain district or region for Bonnie
7 Plant?
8 A. Just --
9 Q. In other words, who do you
10 report to, Mr. Trussell?
11 A. I report to Dennis Thomas,
12 Bonnie Plant --
13 Q. Who is he?
14 A. He's the manager for Bonnie
15 Plant.
16 Q. Where is he? Is he in Union
17 Springs?
18 A. Union Springs.
19 Q. All right. But, in other
20 words, are there -- a lot of times
21 companies divide up geographically into
22 say the southern region or -- anything
23 like that?

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1 A. Huh-uh.
2 Q. Do y'all have anything like
3 that?
4 A. No, sir, not that I know of.
5 Q. Okay. So you just manage your
6 four salesmen, four route helpers and your
7 five growers and your wife?
8 A. That's correct.
9 Q. That's all the folks that work
10 out of Donaldsonville?
11 A. That's correct.
12 Q. Okay. And then you take
13 instructions from Dennis Thomas or that's
14 who you report your sales results and
15 things to?
16 A. That's correct.
17 Q. And if you need something,
18 labor or -- you report to him?
19 A. I report to him, and he might
20 -- just report to him, and that's it.
21 Q. All right. And, Mr. Trussell,
22 I don't want to know specifically your
23 salary or anything like that. I just want

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1 to know the arrangement of how you work.
2 Are you paid a salary?
3 A. No. I'm paid by the number of
4 flats that I grow at that station.
5 Q. Okay. You're paid on how many
6 you grow?
7 A. How many we -- no, how many we
8 scan sell.
9 Q. Scan sell?
10 A. Sell, right.
11 Q. So these plants are sold on a
12 consignment basis?
13 A. That is correct.
14 Q. So you physically have to --
15 not you, but your sales staff has to stock
16 them into stores, correct?
17 A. That's correct.
18 Q. And when they stock them, do
19 they scan them, that is, they have some
20 kind of a label or a bar code and they're
21 scanned into the computer?
22 A. They have a bar code, and the
23 stores scan them.

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1 Q. Okay. And then if the plant
2 is not sold by the Lowe's or the Home
3 Depot or whatever, do they -- can they
4 turn it back in and get credit from you?
5 A. We just pick it up, being it's
6 on pay by scan. We only get paid for what
7 is scanned.
8 Q. What they sell out the door?
9 A. Right. That's correct.
10 Q. Okay. So it takes a period of
11 time after your season for y'all to, in
12 effect, settle up?
13 A. That is correct.
14 Q. Okay. Because, like we say,
15 it's a consignment basis, correct?
16 A. That's correct.
17 Q. Okay. Now, how much do you
18 get a flat? Is it so many cents a flat,
19 or how does that work?
20 A. So much a flat. We get paid
21 by the flat.
22 Q. And a flat is like those tray
23 of eight?

5 (Pages 17 to 20)

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1 A. Right, tray of eight, tray of
2 eight or a tray of seventeen or a tray of
3 nineteen.
4 Q. Depending on the plant?
5 A. Depending on the number of
6 plants in the tray.
7 Q. Okay. So like I bought some
8 marigolds, do y'all sell those?
9 A. That's correct.
10 Q. And they come in a flat with
11 eight plants?
12 A. With eight packs, nine --
13 eight oh nines, you have eight packs to
14 the flat.
15 Q. Okay.
16 A. Eight packs to the flat. Or
17 either it could be if they're individual
18 plants, there can be seventeen, nineteen,
19 ten or either eight individual plants.
20 Q. Okay. All right. Now, do you
21 have four salesmen that work out of
22 Donaldsonville?
23 A. That's correct.

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1 Q. Who are those four salesmen
2 right now?
3 A. Joey Vaughn.
4 Q. All right.
5 A. Jeff Parker.
6 Q. All right. Is that
7 V-a-u-g-h-n?
8 A. V-a-u-g-h-n.
9 Q. Okay.
10 A. Jeff Parker.
11 Q. Okay.
12 A. Ian Mills, I-a-n, and Mike
13 Jones.
14 Q. All right. Now, have those
15 gentlemen all been working there the whole
16 time you've been there?
17 A. No, sir.
18 Q. Okay.
19 A. Jeff Parker and Joey Vaughn
20 are the only two.
21 Q. Okay. They have been there
22 for three years?
23 A. They have been there for three

Page 23

1 years.
2 Q. All right. How about Ian
3 Mills?
4 A. This is Ian's second year,
5 Mike's first year.
6 Q. Now, when you say Ian Mills'
7 second year, is that with the company --
8 A. No.
9 Q. -- or as a salesman there?
10 A. Second year in Louisiana.
11 Q. Okay. Where did he work
12 before?
13 A. He worked out of Missouri, but
14 his territory was in the Dakotas.
15 Q. All right. And what about
16 Mike Jones?
17 A. He's new.
18 Q. He's new?
19 A. He's new.
20 Q. New hire?
21 A. New hire.
22 Q. How old is Mike Jones?
23 A. Forty-four, forty-five.

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1 Q. Approximately his --
2 A. Between his middle forties,
3 early fifties.
4 Q. Okay. Now, you've been with
5 the company for over twenty years?
6 A. Right.
7 Q. Okay. Have you hired salesmen
8 or do people come to you? Or how do you
9 get salesmen?
10 MR. GERHARDT: Object to the
11 form.
12 Q. You can answer. He's just
13 objecting for the record. How do y'all
14 hire salesmen?
15 A. Different ways. I can hire
16 them or either they come from the home
17 office. It varies.
18 Q. Okay. But, I mean, from time
19 to time have people come to you and
20 applied for a job and you've hired them?
21 A. I can hire them if I choose to
22 do so.
23 Q. Okay.

6 (Pages 21 to 24)

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1 A. But I have to go through the
2 office once I hire.
3 Q. You have to get approval?
4 A. Approval, right.
5 Q. Sure.
6 A. Right.
7 Q. But, I mean -- and can you
8 fire a salesmen?
9 A. Yes, I can.
10 Q. Okay. You don't have to -- do
11 you have to get approval for that too?
12 A. No, sir, I don't have to get
13 approval for that.
14 Q. All right. Well, how many
15 salesmen would you say you've hired during
16 your career at Bonnie Plant? Would it be
17 a dozen or more?
18 A. Oh, about six or seven.
19 Q. Okay. Were any of them over
20 age sixty when you hired them?
21 A. No, sir.
22 Q. Okay. Now, and how many
23 salesmen -- where did you work before

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1 Donaldsonville?
2 A. Tupelo, Mississippi.
3 Q. Were you a station manager
4 there?
5 A. I was a station manager there.
6 Q. How long have you been a
7 station manager?
8 A. Seven -- it's eight years,
9 eight years.
10 Q. Okay. At one time did you
11 used to sell for them, I mean as a route
12 salesman?
13 A. Yes, I was a route salesmen.
14 Q. That's what Terry Watson does,
15 correct?
16 A. Right. Right.
17 Q. So you've done that job,
18 correct?
19 A. Correct.
20 Q. And is it a hard job in the
21 sense that there is a lot -- you got to
22 pay attention to your customer, correct?
23 MR. GERHARDT: Object to the

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1 form.
2 Q. You can answer.
3 A. It's the most physical work a
4 person can do. It's long hours and hard
5 work.
6 Q. Okay. I mean, salesmen for
7 Bonnie Plant, they earn their money. Is
8 that a fair statement?
9 A. That is good -- right, that's
10 correct.
11 Q. Okay. I mean, if you want
12 something easy, that ain't going to be for
13 you?
14 A. Right.
15 MR. GERHARDT: Object to the
16 form.
17 Q. Correct?
18 A. Correct.
19 Q. Now, I understood -- and the
20 reason I'm taking your deposition, Mr.
21 Trussell, is I was told by the attorneys
22 for Bonnie Plant that for a short period
23 of time, you supervised Terry Watson, that

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1 is, he reported to you.
2 A. That is correct.
3 Q. And do you know when that
4 period of time was?
5 A. He was there about two and a
6 half, maybe three weeks, February of 2006,
7 I think that's correct.
8 Q. February. I know it was in
9 the spring season of 2006?
10 A. February 2006, right.
11 Q. And do you know when he left
12 Donaldsonville?
13 A. He wasn't there but about two
14 and a half weeks, maybe three, I just
15 don't remember. He left before the first
16 of March, I'm pretty sure of that.
17 Q. Okay. Sir -- and I'm asking
18 because I'm not familiar with y'all's
19 documents or anything.
20 A. Okay.
21 Q. But are there any documents
22 that might help us with the dates, that
23 is, when they transfer from one location

7 (Pages 25 to 28)

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1 to another, does there have to be some
2 kind of document for that?
3 A. I didn't have any, but the
4 office in Union Springs probably would
5 have something.
6 Q. What would you call that? I
7 mean, how would I ask for that?
8 A. I don't know.
9 Q. Okay. Well, how was Terry
10 assigned to you, that is, who did it?
11 A. Joe Stewart called and asked
12 me and I told him send him down there,
13 we'd try to give him something to do.
14 Q. Okay. Do you remember your
15 conversation with Joe?
16 A. Yeah. Joe said we needed to
17 try to keep the boy on the payroll so he
18 would be able to have some insurance. And
19 I -- I thought it was mighty nice of Joe
20 to do that.
21 Q. Did he tell you where Terry
22 had been working?
23 A. No, did not know.

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1 Q. Okay. Do you know anybody in
2 Bells, Tennessee?
3 A. Yes.
4 Q. Do you know where that is?
5 A. I know where that is.
6 Q. Near Nashville.
7 A. It's north of Tupelo, about
8 sixty miles.
9 Q. Okay. Did you know that Terry
10 Watson had worked for the company for
11 twenty years?
12 A. Yeah, I knew Terry had worked
13 for the company. But how long, I didn't
14 know.
15 Q. In fact, would -- do y'all
16 have an annual sales meeting?
17 A. Yes.
18 Q. Where all the salesmen go and
19 station managers go, I assume?
20 A. That is correct.
21 Q. And so had you seen him from
22 time to time --
23 A. Yeah --

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1 Q. -- at that sales --
2 A. -- at the meetings.
3 Q. Sure. And just -- Bonnie
4 Plant sells in all forty-eight states in
5 the continental U.S., correct?
6 A. That's correct.
7 Q. So they have salesmen in all
8 those states?
9 A. That's correct.
10 Q. And would y'all get together
11 all at once once a year?
12 A. Most of them do. Some are not
13 invited.
14 Q. Okay.
15 A. We can't room -- we can't put
16 them all in the hotel.
17 Q. Where do y'all meet? Do y'all
18 meet in Alabama?
19 A. Conference Center at Auburn.
20 Q. Is it always the meeting is
21 always at Auburn?
22 A. Used to be in Eufaula at Lake
23 Point.

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1 Q. At the golf course out there?
2 A. Yeah.
3 Q. Now --
4 A. We got so big, we had to move
5 to Auburn.
6 Q. And what kind of things do
7 y'all do at the sales meeting? Y'all put
8 on programs and training things?
9 A. No.
10 Q. What do y'all do?
11 A. Mostly nothing. Party.
12 Q. Just get liquored up?
13 A. Get liquored up.
14 Q. Well, did you know that in the
15 year 2005, in the spring season of 2005,
16 Terry Watson had sold three hundred
17 thousand dollars worth of plants?
18 A. I didn't know that.
19 Q. At age sixty-one, he'd sold
20 three hundred thousand. You didn't know
21 that?
22 A. I did not know that.
23 MR. GERHARDT: Object to the

8 (Pages 29 to 32)

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1 form.
2 Q. Do you have to hustle to do
3 that?
4 MR. GERHARDT: Object to the
5 form.
6 Q. You can answer.
7 A. He had to have some good
8 labor.
9 Q. I agree with that. Did he
10 have to work to do it?
11 MR. GERHARDT: Object to the
12 form.
13 Q. You can answer. He just
14 objects for the record. There is not
15 anybody here to rule on it.
16 A. He would have had to have a
17 lot of good help.
18 Q. Okay. Mr. Trussell, do you
19 know what I mean when I say retaliation?
20 Do you know what that means?
21 A. I think I do.
22 Q. What does that mean, sir?
23 A. I'm trying to think of a

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1 definition. I can't think of one right at
2 the present time.
3 Q. Okay. Well, I tell you what,
4 I'll help you a little. Do you agree with
5 me that it's illegal to discriminate
6 against somebody because of their age?
7 MR. GERHARDT: Object to the
8 form.
9 Q. You can answer.
10 A. Well, I'm older than him and
11 hadn't discriminated against me.
12 Q. Do you agree that age
13 discrimination is illegal?
14 MR. GERHARDT: Object to the
15 form.
16 Q. You can answer.
17 A. I'm just older than Terry, and
18 I'm still there.
19 Q. Well, sir, have you had any
20 training about age discrimination?
21 MR. GERHARDT: Object to the
22 form.
23 Q. Sir?

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1 A. Do what?
2 Q. Have you ever been trained
3 about age discrimination?
4 A. No.
5 Q. Do y'all have written
6 materials that are passed out at your
7 annual meetings about Bonnie Plant
8 policies regarding age discrimination?
9 A. We have some literature passed
10 out, but I probably don't read it.
11 Q. Okay. Well, did you know
12 that if somebody complains of age
13 discrimination, that that is what the law
14 considers to be a protected activity?
15 MR. GERHARDT: Object to the
16 form.
17 Q. You can answer. Did you know
18 that, sir?
19 A. I didn't know that.
20 Q. And did you know that the law
21 prohibits an employer from taking an
22 adverse action against a person because of
23 their complaint of age discrimination?

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1 Did you know that?
2 MR. GERHARDT: Object to the
3 form.
4 Q. You can answer.
5 A. Didn't know that.
6 Q. Did you know that before Terry
7 Watson was transferred to Donaldsonville,
8 that he made a written complaint of age
9 discrimination? Did you know that?
10 MR. GERHARDT: Object to the
11 form.
12 Q. You can answer.
13 A. No, sir.
14 Q. Has anybody ever told you
15 that Terry Watson complained of age
16 discrimination?
17 A. No, sir.
18 Q. Well, do you know why you're
19 giving a deposition today?
20 A. Why?
21 Q. Do you know? Has anybody told
22 you why you're giving a deposition?
23 MR. GERHARDT: Object to the

9 (Pages 33 to 36)

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1 form.
2 A. He's got a lawsuit, I assume.
3 Q. Well, what job was Mr. Watson
4 assigned when he was in Donaldsonville?
5 A. A route helper.
6 Q. A route helper?
7 A. That is correct.
8 Q. Do those people work on a
9 commission?
10 A. Those people work on a
11 commission.
12 Q. As a route helper they get a
13 commission?
14 A. No, no, I thought you said did
15 the route men work on. No. He --
16 Q. Well, did Terry Watson receive
17 any commissions for the time that he
18 worked in Donaldsonville?
19 A. Not that I know of. He didn't
20 receive anything.
21 Q. Well, he got paid, didn't he,
22 a draw?
23 A. I assume he did. I never saw

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1 a check.
2 Q. Okay. You weren't aware of
3 his compensation arrangement?
4 A. I wasn't aware. He had a -- I
5 wasn't aware, you know. They had an
6 agreement with him.
7 Q. Well, did they charge him
8 against you?
9 A. No, they did not.
10 Q. Do you know who they charged
11 him to?
12 A. I have no idea.
13 Q. Did he call on customers near
14 Donaldsonville and try to open new stores?
15 A. He rode with the guys on the
16 truck for about two or three trips. And
17 as far as my knowledge, he didn't do
18 anything to help anybody. Just rode with
19 them there for about seven, eight, ten
20 days. It was early in the season, and
21 Terry didn't do much while he was there.
22 Q. Do you know Pitt Lowman?
23 A. Yes.

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1 Q. Who is that?
2 A. He's my stepson.
3 Q. So he married your daughter?
4 A. I married his momma.
5 Q. Oh, you married his momma?
6 A. Years ago.
7 Q. Okay. Was Pitt Lowman ever
8 assigned to work with Terry Watson?
9 A. They rode around down there,
10 and they didn't -- they didn't receive any
11 pay out of my station. They were just
12 down there. And he went with Pitts out
13 there and found a couple of stores. To my
14 knowledge, we're not working but two
15 accounts that Pitts opened up while he was
16 there, and they both left after about two
17 or three weeks.
18 Q. Sir, is Pitts still working
19 with Bonnie Plant?
20 A. I think Pitts is in New York.
21 Q. Is he with Bonnie Plant?
22 A. Yeah.
23 Q. What does he do?

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1 A. He's a salesman.
2 Q. And had Pitt ever worked as a
3 salesman before being assigned to
4 Donaldsonville?
5 A. No, he has not.
6 Q. Does he have a college degree?
7 A. No, he does not.
8 Q. How old is Pitt?
9 A. Oh, about thirty, thirty-one.
10 Q. Has he ever worked in sales
11 before?
12 A. He worked for himself. He had
13 a little trucking company.
14 Q. Well, do you know if Terry and
15 Pitt called on businesses and tried to
16 sell them plants while he was working at
17 Donaldsonville?
18 MR. GERHARDT: Object to the
19 form.
20 Q. You can answer.
21 A. I think they went out, and,
22 like I said, I think we have two accounts
23 that they opened up during the two weeks

10 (Pages 37 to 40)

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1 they was down there. They -- the business
2 was already there. They were just out
3 there riding around.
4 Q. Well, did they have to provide
5 any kind of report or anything to you
6 about where they went?
7 A. Nothing. Nothing.
8 Q. You didn't check on them?
9 A. I didn't check on them. They
10 were just out there playing around.
11 Q. They were just riding around?
12 A. Riding around, burning up gas.
13 Q. Are you a good manager, Mr.
14 Trussell?
15 MR. GERHARDT: Object to the
16 form.
17 Q. You can answer. Do you
18 consider yourself a pretty good manager?
19 A. I would think so.
20 Q. Well, did you not check on
21 them because he was your stepson, or what
22 reason?
23 A. They didn't have anything to

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1 do. They were riding around trying to
2 open up a few new accounts, and it really
3 wasn't anything -- I knew they both wasn't
4 going to be there long because there
5 wasn't anything down there for them to do.
6 Q. So basically this position was
7 just a make work position?
8 A. Right, that's correct.
9 Q. That's really what it was?
10 A. Right, that's correct.
11 Q. It wasn't any future in that.
12 It was just something for him to do for a
13 short time, correct --
14 MR. GERHARDT: Object to the
15 form.
16 Q. -- Terry Watson?
17 A. I assume -- I'm assuming that
18 he was on the payroll, so they just
19 found -- you know, wanted to send him
20 somewhere because I didn't pay him
21 anything.
22 Q. All right. And then what
23 happened after two or three weeks,

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1 according to you, what happened to Terry?
2 A. They called and --
3 Q. "They" being who?
4 A. I think Joe Stewart called and
5 said that they was going to send him to
6 Jasper, Alabama. They had had some man to
7 quit there, to the best of my
8 recollection. I don't remember too --
9 Q. A route salesman in Jasper
10 quit?
11 A. Jasper, right, and he was
12 going up there to replace him.
13 Q. And Terry was going to take
14 over that route?
15 A. Right, that's correct.
16 Q. Okay. And so did you tell
17 Terry that he needed to get in touch with
18 Joe and get on up to Jasper?
19 A. I don't remember if Joe called
20 Terry or how it really worked. All I
21 know, he left and went to Jasper. The
22 details, I don't remember.
23 Q. During the short time that you

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1 managed Terry or he reported to you, did
2 you have any criticism of his job
3 performance?
4 A. No. He didn't have nothing to
5 do and wasn't no really job performance
6 that he was performing for me during the
7 time he was there.
8 Q. You certainly didn't have any
9 occasion to write him up in some kind of a
10 disciplinary way?
11 A. No, I didn't.
12 Q. And you never orally reported
13 to him that there was something that he
14 wasn't doing that he should be doing; is
15 that correct?
16 MR. GERHARDT: Object to the
17 form.
18 A. That's correct.
19 Q. Okay. So basically he just
20 called on some accounts while he worked
21 there for you, and you don't feel like he
22 garnered y'all a lot of business in the
23 short time he was there?

11 (Pages 41 to 44)

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1 A. That's correct.
2 Q. And there wasn't anybody that
3 replaced him in what he was doing?
4 A. No.
5 Q. Because this was a make work
6 position?
7 MR. GERHARDT: Object to the
8 form.
9 A. There you go.
10 Q. And your son-in-law, what did
11 he do after Terry left?
12 A. He left about the same time,
13 if I remember it, and he went on to New
14 York.
15 Q. Okay. So --
16 A. And Terry went to Joe
17 Watson's -- I mean not Joe Watson. Joey
18 Pageant.
19 Q. And Mr. Pageant is a station
20 manager over Jasper; is that correct?
21 A. At that time.
22 Q. Oh, he was at that time?
23 A. At the time.

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1 Q. Is he not with the company
2 anymore?
3 A. He is a station manager in
4 Senora, Kentucky now.
5 Q. Okay. Now, did you have
6 anything else to do with Terry Watson?
7 A. No.
8 Q. I mean, have you seen him at
9 the meetings since then?
10 A. I saw him one time at the
11 meeting and just walked by and spoke to
12 him like I would you.
13 Q. Sure. I hope he said
14 something back. Did he?
15 A. He did. He did.
16 Q. Okay. And, Mr. Trussell, can
17 you explain to me what you see to be the
18 differences between working a route as a
19 route salesman and the job of a station
20 manager?
21 A. A route salesman has got to be
22 able to do physical work, get in and out
23 of a vehicle several times a day. A

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1 station manager, all he is doing basically
2 is growing and managing labor. My
3 physical work is nothing like it was at
4 one time. And a route salesman for Bonnie
5 Plant Farm must be in excellent physical
6 condition to be able to do the work.
7 Q. So if you had a -- I apologize
8 for asking you this, but do you have any
9 health problems, like high blood pressure
10 or anything like that?
11 A. Nothing -- I have high blood
12 pressure, but it doesn't affect my working
13 ability.
14 Q. Okay. And do you take
15 medication for it?
16 A. I take medication for it.
17 Q. Have you ever had any heart
18 problem or anything like that?
19 A. No, sir.
20 Q. Good for you.
21 A. That's the reason I'm staying.
22 As long as I'm healthy, I'm going to
23 continue doing it.

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1 Q. Okay. If a person -- let's
2 say a person had heart problems, they
3 could -- they could -- what you're
4 describing is they could do the job of --
5 it would be easier for them to do the job
6 of a station manager than it would be to
7 do the more physical labor of a route
8 salesman; is that correct?
9 A. Yes, if they have the ability
10 to grow and fertilize and spray plants. A
11 lot about running a station everybody
12 can't do it.
13 Q. Obviously they have to be able
14 to grow plants, correct?
15 A. Right.
16 Q. And they have to be able to
17 manage employees, correct?
18 A. Right.
19 Q. Now, do you get paid more or
20 less if your salesmen -- the salesmen have
21 a commission, correct?
22 A. That's correct.
23 Q. And their commission, if they

12 (Pages 45 to 48)

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1 reach a certain goal or sales level, they
2 get more commission, correct?
3 A. That's correct.
4 Q. And I think, from what I've
5 seen, that at like three hundred and
6 seventy-five thousand dollars, the
7 commission changes?
8 A. That's correct.
9 Q. Do you know what it is, what
10 percentage it is?
11 A. No. Because I'm not running a
12 route now and, you know, I hadn't -- I get
13 paid by the flat.
14 Q. Okay. Well, what I'm trying
15 to ask you is -- see if I'm understanding
16 this right, and I'm just going to throw
17 out these figures.
18 A. Okay.
19 Q. Up to three hundred and
20 seventy-five thousand dollars, if you
21 don't get there, let's say you get ten
22 percent commission, okay?
23 A. Okay.

1 meet that sales goal?
2 A. That's correct.
3 Q. Is that a fair statement?
4 A. That's fair.
5 Q. And the commissions that you
6 pay them, they have certain expenses that
7 have to come out of those commissions,
8 correct?
9 A. That's correct.
10 Q. So that Bonnie Plant can
11 manage their cost, correct?
12 A. Correct.
13 MR. GERHARDT: Object to the
14 form.
15 Q. They're making a percentage on
16 every flat they sell, right? That's the
17 hope anyway?
18 A. Yeah.
19 Q. Correct?
20 A. That's correct.
21 Q. So the salesman is bearing the
22 risk of his route for sales? He has to
23 pay his helper out of his commissions,

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1 Q. But if you get -- if you meet
2 your goal of three hundred seventy-five
3 thousand, let's say you get fourteen
4 percent commission. Does that make sense
5 you have?
6 A. You have an increase according
7 to where you are at. I don't know what it
8 is. But the more you sell, the more --
9 certain stations.
10 Q. Okay. So a salesman that
11 meets his commission is going to get paid
12 more for all the sales. It's not fourteen
13 percent over three seventy-five, it's
14 fourteen percent of the three
15 seventy-five?
16 A. That's correct.
17 Q. But if you don't meet your
18 goal, you're going to get less commission,
19 right?
20 A. That's correct. That's
21 correct.
22 Q. So it's important in terms of
23 compensation to the salesmen that they

1 correct?
2 MR. GERHARDT: Object to the
3 form.
4 Q. Correct?
5 A. Correct.
6 Q. And he has certain costs that
7 are deducted from his route? For example,
8 y'all have some kind of charge-back for
9 fines. Do you know what I'm talking
10 about?
11 A. Yes, there is certain fines.
12 Q. What is a fine for a salesman?
13 What does that mean?
14 A. If he doesn't do his logbook
15 properly, doesn't turn his tickets in.
16 It's different things.
17 Q. They got a financial incentive
18 to do what you ask?
19 A. Right.
20 Q. In fact, if they don't go to
21 their -- y'all have chain stores like
22 Lowe's and Home Depot, correct, on your
23 routes?

13 (Pages 49 to 52)

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1 A. That's correct.
2 Q. If they don't go to those
3 every so often, they can be fined,
4 correct?
5 A. Right.
6 Q. How often do they have to show
7 up at the chain stores?
8 A. We have changed that this
9 year. Doesn't have a skip program.
10 That's what they call a skip program. We
11 doesn't have it anymore. It was in effect
12 until this year.
13 Q. Do you know in previous years
14 how often they had to show up?
15 A. Twice a week. Every four
16 days.
17 Q. And, sir, at Bonnie Plant,
18 y'all have got GPS devices in the trucks,
19 correct?
20 A. That's correct.
21 Q. You know when the truck is
22 running and when it's moving, correct?
23 A. That's correct.

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1 Q. You know how many hours a day
2 the salesman is working, correct?
3 A. That's correct.
4 Q. Now, you don't have to have a
5 CDL to drive this truck, right?
6 A. Nope.
7 Q. But do you have certain legal
8 requirements about when -- what hours you
9 can operate it?
10 A. Yes, you do.
11 Q. What do y'all call that?
12 A. Well, you got a logbook. You
13 can only work so many hours a week.
14 Q. A log law or something that
15 you --
16 A. Yeah.
17 Q. Now, can the helper drive the
18 truck?
19 A. If he's legal. If he has
20 the --
21 Q. If he has the --
22 A. -- paperwork that's necessary.
23 Q. If he has a health card and --

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1 A. Right.
2 Q. -- driver's license?
3 A. Legal driver's license and a
4 medical card.
5 Q. Okay. So --
6 A. And pass the drug test.
7 Q. So between the helper and the
8 salesmen, they can -- can they work around
9 the clock then?
10 A. About twenty, twenty-one
11 hours.
12 Q. Okay.
13 A. But they will have enough time
14 off, the other three or four doesn't
15 matter. They will work -- in other words,
16 the other three or four, they will be off
17 enough that that doesn't matter.
18 Q. Have you ever fired anybody
19 for a logbook violation?
20 A. No, sir.
21 Q. Have you ever disciplined
22 anybody for working too many hours?
23 A. No, sir, because I hadn't had

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1 to.
2 Q. Do you get reports that are
3 printed out about the trucks and how many
4 hours they are operating?
5 A. I know how many hours they are
6 operating. I have the logbook that I look
7 at before I send it to Union Springs.
8 Q. You have what the driver
9 reports?
10 A. Right.
11 Q. I'm asking you about
12 information that may be different from
13 what the driver reports, that is, the
14 actual GPS log.
15 A. I don't have that.
16 Q. Who has it?
17 A. It's in Union Springs.
18 Q. Oh, okay. Well, why don't
19 they make that available to you?
20 A. I don't guess they feel it's
21 necessary.
22 Q. Okay. Now, is commission
23 important, an important element of your

14 (Pages 53 to 56)

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1 compensation to a route salesmen?
2 MR. GERHARDT: Object to the
3 form.
4 Q. You can answer.
5 A. It's the only way he gets paid
6 is on commission.
7 Q. He gets a draw against his
8 commission, correct?
9 A. That's correct.
10 Q. Because there's -- it takes
11 some time to settle up. Y'all pay him a
12 draw during the season, right?
13 A. That's correct.
14 Q. And if his commission doesn't
15 exceed his draw, he can owe y'all money,
16 can't he?
17 A. That is correct, yeah.
18 Q. That ain't a good thing, is
19 it?
20 A. Nope.
21 Q. That's like working for the
22 company store there, isn't it?
23 A. Yeah.

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1 MR. GERHARDT: Object to the
2 form.
3 Q. You work all season and you
4 owe money at the end of the season, right?
5 MR. GERHARDT: Object to the
6 form.
7 Q. You can answer.
8 A. That's correct.
9 Q. Now, do you know what I'm
10 talking about when I say a long route
11 versus a short route?
12 A. Yes, I do.
13 Q. Okay. What does that mean for
14 the people on the jury? What is the
15 difference between a long route and a
16 short route?
17 A. Some of them consist of more
18 mileage than others.
19 Q. There is a longer distance
20 between the stores?
21 A. Right. In the North and
22 Midwest, you have go longer routes because
23 Montana and Iowa and Ohio and places like

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1 that, more distance between towns.
2 Q. Okay. It's basically a matter
3 of the concentration of the stores; is
4 that right?
5 A. That's correct.
6 Q. I mean, in New Orleans, for
7 example, you might have ten or twelve
8 stores within twenty miles?
9 A. That's correct.
10 Q. But in Louisiana, other parts
11 of Louisiana, you might have to drive
12 fifty miles between stores, right, or
13 Texas or somewhere like that?
14 A. Louisiana about twenty,
15 twenty-five.
16 Q. Okay. Well, and part of your
17 job as a station manager is to try to even
18 up the routes, correct?
19 A. That's right.
20 Q. I mean, you want -- you know,
21 Home Depot and Lowe's and people are
22 opening stores all the time, you want each
23 salesman to have an opportunity to sell,

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1 correct?
2 A. That's correct.
3 Q. And you want them to have --
4 well, you wouldn't want to have a salesman
5 with twenty-five stores and another
6 salesman with ten, right?
7 A. That's correct.
8 Q. You try to get that number
9 closer together, correct?
10 A. Try to get the money
11 balancing.
12 Q. That's right. That's right.
13 And so every year, do y'all -- is that one
14 of the things y'all do at the sales
15 meeting or some other location is y'all
16 try to balance up the routes, even up the
17 routes?
18 A. That's up to each station
19 manager.
20 Q. Okay. That's just something
21 you do on your own?
22 A. Right.
23 Q. Okay. Charlie, do y'all

15 (Pages 57 to 60)

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1 have -- some sales organizations, they
2 have promotions or contests or things like
3 that. Do y'all have anything like that?
4 A. No, sir.
5 Q. Okay. I mean, you know what
6 I'm talking about, though, right, where
7 somebody can win a trip if they sell so
8 much or something like that?
9 A. No.
10 Q. Y'all don't have any awards or
11 anything for salesmen?
12 A. Nothing. Work. It's a unique
13 business.
14 Q. Charlie, you live in
15 Louisiana, I'm in Birmingham. I'm not
16 going to have a chance to talk to you
17 again. Is there anything good or bad that
18 you can say about Terry Watson, my
19 client --
20 MR. GERHARDT: Object to the
21 form.
22 Q. -- as an employee?
23 A. Nothing good or bad. Nothing.

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1 I don't have nothing to say --
2 Q. Okay.
3 A. -- one way or the other.
4 Q. Now, I will tell you this,
5 that I've asked for your deposition, and
6 they produced you. And the same law that
7 protects Terry Watson protects you, that
8 is, they can't punish you or take any
9 action against you because you
10 participated in this proceeding, in this
11 hearing. That is, they can't take action
12 against you because you give testimony
13 that they don't like. Do you understand
14 that?
15 A. I understand.
16 MR. GERHARDT: Jerry, I
17 object. I can't believe you are even
18 insinuating that either.
19 MR. ROBERSON: I didn't
20 insinuate anything. Since y'all hadn't
21 bothered to train him, I thought I might
22 ought to.
23 Q. But do you understand that you

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1 can't be punished for any testimony you
2 give today?
3 MR. GERHARDT: Object to the
4 form, Jerry. And, again, I can't believe
5 you are asking these questions.
6 A. (No response.)
7 Q. Sir?
8 A. That's correct.
9 Q. Okay. Mr. Trussell, have you
10 ever got a speeding ticket?
11 A. Several times.
12 Q. You know what happens when you
13 break the law, you can be punished, right?
14 You can be fined or have some punishment,
15 correct?
16 A. That's correct.
17 Q. Do you think that people,
18 employers that discriminate based on age,
19 which is an illegal activity, do you think
20 they should be punished?
21 MR. GERHARDT: Object to the
22 form.
23 Q. You can answer.

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1 A. They're not discriminating
2 because I'm older than Terry.
3 Q. You are older than Terry.
4 A. I'm still working.
5 Q. You are still working. He's
6 still working. He's still working. For a
7 lot less than he was working for.
8 MR. GERHARDT: Object to the
9 form, if that's a question.
10 Q. Do you understand that?
11 MR. GERHARDT: Object to the
12 form.
13 Q. Do you understand Terry's
14 compensation has changed since he made his
15 complaint of age discrimination?
16 MR. GERHARDT: Object to the
17 form.
18 Q. Are you aware of that? Sir?
19 A. No.
20 MR. GERHARDT: He's testified
21 he's not aware of his compensation since
22 he left, I believe.
23 Q. Can I get an answer to my

16 (Pages 61 to 64)

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1 question? Do you know about his
2 compensation?
3 A. I have no -- don't know
4 anything about it.
5 Q. Okay. Well, do you know any
6 reason why a route salesman is transferred
7 when he's doing a satisfactory job?
8 MR. GERHARDT: Objection.
9 Q. Do you know why his route is
10 reassigned when he's doing a satisfactory
11 job?
12 MR. GERHARDT: Object to the
13 form.
14 Q. You can answer.
15 A. It happens all the time.
16 Q. Why does it happen?
17 A. Just they might need somebody
18 in some other area. You know, it's no
19 reason. It's just happens.
20 Q. Well, you have got to take him
21 off that route to put him somewhere else,
22 don't you?
23 A. That's correct.

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1 Q. Why would you do that?
2 MR. GERHARDT: Object to the
3 form.
4 A. I don't know.
5 Q. I don't either. Have you ever
6 done that, taken a route salesman that was
7 doing a satisfactory job and send him
8 somewhere else?
9 A. Yes.
10 Q. Why? Why did you do it?
11 A. For expansion purposes. I
12 divided my routes up this year, went from
13 three to four. Took money away from all
14 three of them to have a fourth route. And
15 it will continue to expand. It does every
16 year. Didn't really take anything. They
17 will have more time to do a better job.
18 Q. But, I understand what you're
19 saying.
20 A. Uh-huh.
21 Q. You had three routes, now you
22 have four?
23 A. There are four.

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1 Q. But you didn't take a salesman
2 that was doing a good job and send him to
3 another territory?
4 A. I took money away from some
5 that was doing a good job.
6 Q. You did take money away. But
7 you didn't transfer him involuntarily, did
8 you?
9 MR. GERHARDT: Object to the
10 form.
11 Q. You can answer.
12 MR. GERHARDT: I don't even
13 know who we are talking about getting --
14 who is this person we're talking about?
15 Who is the "him"?
16 MR. ROBERSON: Terry Watson.
17 MR. GERHARDT: I didn't know
18 if you were asking about Mr. Watson
19 because you have been going back and forth
20 about generalities, and sometimes I guess
21 trying to imply that this may have to do
22 with Mr. Watson.
23 MR. ROBERSON: No, I'm asking

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1 him if he has ever transferred a route
2 salesman who was meeting his sales goals
3 to another route.
4 Q. And his answer is?
5 A. It has -- it has been done.
6 Q. Have you ever done it, Mr.
7 Trussell?
8 A. No, I haven't. Haven't had to
9 yet.
10 Q. Thank you. And you don't know
11 any reason why it would be done, correct?
12 MR. GERHARDT: Object to the
13 form.
14 Q. Sir? You don't know any
15 reason why you would transfer somebody
16 that was doing a satisfactory job to
17 another territory, do you?
18 MR. GERHARDT: That's been
19 asked and answered. And one of the
20 reasons -- I know one reason he gave was
21 for expansion purposes. That's one of the
22 reasons.
23 MR. ROBERSON: He tried to give

17 (Pages 65 to 68)

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1 it, but we have eliminated that because he
2 said that's what he did on his route, but
3 he didn't transfer anybody. He created an
4 additional route, but he didn't transfer
5 anybody, correct?
6 A. That's correct.
7 Q. And you hadn't and you don't
8 know why anyone would be transferred under
9 those circumstances, correct?
10 MR. GERHARDT: Object to the
11 form.
12 Q. You can answer.
13 A. I don't really know.
14 MR. ROBERSON: Okay. Thank
15 you, Mr. Trussell. I don't have any
16 further questions. Do you have any? I'm
17 at fifty-three minutes. I need to change
18 tapes if you are going to have some
19 questions.
20 MR. GERHARDT: I might have a
21 few if you want to stop now and take a
22 quick break.
23 MR. ROBERSON: Okay. Let's

1 is we'll have the projected sales. That's
2 the number one thing. What each man
3 thinks he can do, we'll have him put it
4 down on a piece of paper. And as a
5 station manager, I go over it and look at
6 it and we try to have an increase every
7 year. In my fifty years of business, I've
8 never had a decrease.
9 MR. GERHARDT: Thank you.
10 Jerry, that's all I've got.
11 MR. ROBERSON: I didn't have
12 to change tapes for that. I don't have
13 anything else. Thank you, Mr. Trussell.
14 I appreciate your help today.

FURTHER THE DEPONENT SAITH NOT

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1 just go off the record and let me change
2 tapes. We'll go off the record at 2:10.
3 (Whereupon, a break was had
4 from 2:10 p.m. until 2:15 p.m.)
5 MR. ROBERSON: All right.
6 We'll start tape two of the videotape
7 deposition of Charlie Trussell at 2:15.
8
9 EXAMINATION BY MR. GERHARDT:
10 Q. This will be very short. Mr.
11 Trussell, I know you testified a little
12 bit earlier, and I think you were joking,
13 but just to make sure, just to clear that
14 up, will you tell me what it is that you
15 all do at the annual sales meeting?
16 A. We go over the projected sales
17 for the upcoming year to see what our
18 increases can be. We'll go over
19 different -- I'm trying to think of --
20 like trucks and logbooks and all this, we
21 have changes in that, and we'll meet and
22 have a little meeting on it. And the
23 biggest, biggest thing about it, though,

C E R T I F I C A T E

STATE OF ALABAMA)
JEFFERSON COUNTY)

I hereby certify that the
above and foregoing deposition was taken
down by me in stenotypy, and the questions
and answers thereto were reduced to
typewriting under my supervision, and that
the foregoing represents a true and
correct transcript of the deposition given
by said witness upon said hearing.

I further certify that I am
neither of counsel nor of kin to the
parties to the action, nor am I in anywise
interested in the result of said cause.

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**DEFENDANT ALABAMA FARMERS COOPERATIVE,
INC. D/B/A BONNIE PLANT FARMS**

EX. 2

TO EVIDENTIARY SUBMISSION

In The Matter Of:

ARTHUR T. WATSON

v.

ALABAMA FARMERS COOPERATIVE, INC., ET AL.

NO. 2:07-CV-520-WHA

ADAM ALLEY

April 9, 2008



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ALABAMA FARMERS COOPERATIVE, INC., ET AL.

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April 9, 2008

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IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CIVIL ACTION NO. 2:07-CV-520-WHA

ARTHUR T. WATSON,
Plaintiff,

vs.

ALABAMA FARMERS COOPERATIVE, INC.,
D/B/A BONNIE PLANT FARMS,
Defendants.

VIDEO DEPOSITION
OF
ADAM ALLEY
April 9, 2008

REPORTED BY: Eleanor S. Pickett
Certified Shorthand Reporter
and Notary Public

A P P E A R A N C E S

FOR THE PLAINTIFF:

Mr. Jerry D. Roberson
Attorney at Law
Roberson & Roberson
P.O. Box 380487
Birmingham, Alabama 35238

FOR THE DEFENDANT:

Mr. Graham Gerhardt
Attorney at Law
Burr & Forman LLP
3400 Wachovia Tower
Birmingham, Alabama 35203

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S T I P U L A T I O N

IT IS STIPULATED AND AGREED,
by and between the parties, through their
respective counsel, that the video
deposition of ADAM ALLEY may be taken
before Eleanor S. Pickett, Commissioner,
Certified Shorthand Reporter and Notary
Public;

That the signature to and
reading of the deposition by the witness
is waived, the deposition to have the same
force and effect as if full compliance had
been had with all laws and rules of Court
relating to the taking of depositions;

That it shall not be necessary
for any objections to be made by counsel
to any questions, except as to form or
leading questions, and that counsel for
the parties may make objections and assign
grounds at the time of trial, or at the
time said deposition is offered in
evidence, or prior thereto.

I N D E X

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Plaintiff's Exhibits 3 - 7 65

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1 I, Eleanor S. Pickett, a
2 Certified Shorthand Reporter of
3 Birmingham, Alabama, and a Notary Public
4 for the State of Alabama at Large, acting
5 as Commissioner, certify that on this
6 date, as provided by the Federal Rules of
7 Civil Procedure of the United States
8 District Court, and the foregoing
9 stipulation of counsel, there came before
10 me at the law offices of Burr & Forman
11 LLP, 3400 Wachovia Tower, Birmingham,
12 Alabama, on April 9, 2007, commencing at
13 11:36 a.m., ADAM ALLEY, witness in the
14 above cause, for oral examination,
15 whereupon the following proceedings were
16 had:

17
18 MR. ROBERSON: This is the
19 videotape deposition of Adam Alley. It's
20 being taken in the case of Arthur Watson,
21 plaintiff, versus Alabama Farmers
22 Cooperative, Inc., doing business as
23 Bonnie Plant Farms, defendant. This case

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1 is pending in the United States District
2 Court For the Middle District of Alabama,
3 Northern Division. It's CV number 07-520.
4 We are here today at the offices of BURR,
5 Forman in Birmingham. It's now 11:40 on
6 April 9th, 2008. My name is Jerry
7 Roberson. I'm the attorney for the
8 plaintiff, Terry Watson. And I would ask
9 all counsel of record to state their name
10 and who they represent.

11 MR. GERHARDT: I'm Graham
12 Gerhardt with Burr & Forman representing
13 the defendant.

14 MR. ROBERSON: Would you swear
15 our witness, please, ma'am.

16
17 ADAM ALLEY,
18 having been first duly sworn, was examined
19 and testified as follows:

20
21 THE REPORTER: Usual
22 stipulations?

23 MR. ROBERSON: Yes.

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1 MR. GERHARDT: Yes, ma'am.

2
3 EXAMINATION BY MR. ROBERSON:

4 Q. Mr. Alley, I introduced myself
5 before the deposition. But have you ever
6 given a deposition before today?

7 A. Yes.

8 Q. Okay. So you know today
9 you're under oath just like in a court of
10 law, correct?

11 A. Yes, yes.

12 Q. And, if you would, there is
13 only one microphone, if I could get you to
14 articulate your answers out loud and speak
15 up a little bit, okay --

16 A. Sure.

17 Q. And today if I ask you a
18 question that you don't understand, please
19 let me know that you don't understand it,
20 okay?

21 A. Okay.

22 Q. If you answer it, I'm going to
23 have to assume that you understood it.

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1 Fair enough?

2 A. Okay.

3 Q. Now, do you know Terry Watson?

4 A. Yes.

5 Q. And was he assigned to work
6 under your supervision for a period of
7 time?

8 A. Yes.

9 Q. Where do you work, sir?

10 A. Bells, Tennessee.

11 Q. And where is that city in
12 Tennessee?

13 A. West Tennessee, near Jackson,
14 about an hour east of Memphis.

15 Q. And who do you work for?

16 A. Bonnie Plants.

17 Q. How long have you worked for
18 Bonnie Plant?

19 A. Since '95.

20 Q. And have you always worked in
21 Bells, Tennessee?

22 A. Yes.

23 Q. Did you start as a salesman?

2 (Pages 5 to 8)

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1 A. Yes.
2 Q. Okay. And you are now working
3 as a station manager?
4 A. Yes.
5 Q. Who is your supervisor?
6 A. Joe Stewart.
7 Q. What is his position?
8 A. National sales manager.
9 Q. And does he have an office in
10 Union Springs?
11 A. Yes.
12 Q. So if you have a question or
13 you need to get in touch with Joe, you
14 call him at his office?
15 A. Yes.
16 Q. Do you have access to fax
17 machines and e-mail as well?
18 A. Yes.
19 Q. Okay. And have you used all
20 those ways to contact Joe?
21 A. Probably everything short of
22 fax. Normally it's almost always phone.
23 Q. Okay. And I'm sorry, you have

1 Q. Span a large geographical
2 area?
3 A. Pretty much, yeah.
4 Q. You would have to drive for a
5 long time on that route?
6 A. Yes.
7 Q. Is that correct?
8 A. Right.
9 Q. Do you know what I mean when I
10 say a short route, that is, the stores are
11 close together?
12 A. Right.
13 Q. Not that much driving?
14 A. Right.
15 Q. Okay. And what y'all try to
16 do at Bonnie Plant is to make your routes
17 somewhat even, correct?
18 A. Right.
19 Q. Have about the same number of
20 stores --
21 A. Right.
22 Q. -- on each route?
23 A. Right.

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Page 12

1 been a station manager since what date?
2 A. 1999.
3 Q. Okay. So for four years you
4 worked a route in Bells?
5 A. Yes.
6 Q. How do y'all identify the
7 routes? Are they by number or are they by
8 name?
9 A. They are by number.
10 Q. Okay. What route did you work
11 in Bells?
12 A. Eighteen two.
13 Q. Okay. And what does that
14 consist of, sir?
15 A. At the time it was Western
16 Kentucky, Southern Illinois and a little
17 bit of Eastern Missouri.
18 Q. Would that be considered a
19 long route?
20 A. At the time it was, yes.
21 Q. Okay. And do you know what I
22 mean when I say a long route?
23 A. Why don't --

1 Q. Correct?
2 A. Right.
3 Q. Just to be efficient, right?
4 A. Right.
5 Q. Now, when you worked as a
6 route salesman, who was the station
7 manager?
8 A. Joe Stewart.
9 Q. Oh, Joe worked in Bells?
10 A. Yes.
11 Q. The same Joe Stewart?
12 A. Yes.
13 Q. He was a station manager from
14 '95 to '99?
15 A. Uh-huh.
16 Q. Is that correct?
17 A. That's correct, through '98.
18 I guess that would be '94 to '98 because I
19 started the spring -- beginning of '99.
20 Q. Okay. All right. So you're
21 telling me it's a seasonal business?
22 A. Right.
23 Q. And y'all consider the spring

3 (Pages 9 to 12)

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1 season to be your best season?
2 A. Right.
3 Q. Correct?
4 A. Right.
5 Q. And going back to this, Joe
6 hadn't been the nationwide sales manager
7 the whole time. He was formerly a station
8 manager in Bells --
9 A. Right.
10 Q. -- is that correct?
11 A. Correct.
12 Q. Okay. And then did he leave
13 and become the national sales manager?
14 A. Yes.
15 Q. And you moved up to his job?
16 A. Right.
17 Q. Now, when you worked as a
18 route salesman in Bells, how many other
19 salesmen were there?
20 A. There was six or more every
21 year.
22 Q. And what you do as a route
23 salesmen is you drive a truck, correct?

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1 A. Right.
2 Q. And you get plants and
3 vegetables to different stores, correct?
4 A. Correct.
5 Q. You sell them but you also
6 stock the stores, correct?
7 A. Right.
8 Q. So there is some labor
9 involved as well as sales activity --
10 A. Right.
11 Q. -- correct? And when you do
12 this work, you don't have to have a CDL --
13 A. No.
14 Q. -- correct? You just have to
15 be able to drive -- is it a six-wheel
16 truck; is that correct?
17 A. Uh-huh, correct.
18 Q. And, sir, today -- I know when
19 we normally talk, we say uh-huh and
20 huh-uh, but today I'm going to ask you to
21 answer out audibly yes or no, okay? Just
22 so we have a clean record. Fair enough?
23 A. Fair enough.

1 Q. I will try to remind you. I'm
2 not doing that to annoy you, okay?
3 Then when you took over as the
4 station manager in Bells, did you still
5 have six or more salesmen?
6 A. Yes.
7 Q. Okay. And how many do you
8 have now?
9 A. Nine.
10 Q. All right. And Terry Watson
11 worked under your supervision in 2004 and
12 '5 --
13 A. Yes.
14 Q. -- is that correct, those
15 seasons, correct?
16 A. Correct.
17 Q. Okay. And at the time that he
18 worked under your supervision, he actually
19 was previously working down in Louisiana,
20 correct, or Texas and swapped?
21 A. Working out of Texas.
22 Q. Yeah, and swapped, exchanged
23 routes. He had a long route in Louisiana

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1 or Texas, and he exchanged it -- who was
2 the guy he swapped with?
3 A. Butch Stewart.
4 Q. Okay. Now, is Butch related
5 to Joe?
6 A. Brother.
7 Q. Okay. And Butch went to his
8 route and he went to Butch's route,
9 correct?
10 A. Correct. I have no idea -- I
11 don't know anything about the route in
12 Texas, but they did want to swap routes.
13 Q. Okay. And in order to make
14 that exchange, did they have to get your
15 permission?
16 A. Yes.
17 Q. Did they?
18 A. Yes.
19 Q. Okay. And so was Charlie
20 Trussell over Texas?
21 A. No.
22 Q. Who was over there?
23 A. Bill Rainer was over Texas.

4 (Pages 13 to 16)

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1 Q. They had to get his permission
2 too I assume?
3 A. I would gather.
4 Q. Yeah. And did they also have
5 to get Joe Stewart, the national sales
6 manager, get his permission?
7 A. Yes.
8 Q. Okay. Now, is there any
9 paperwork about that permission or is that
10 just an oral permission?
11 A. Just oral.
12 Q. Okay. And the route that
13 Butch had been working in Tennessee, was
14 that considered a short route?
15 A. A shorter route.
16 Q. Okay. Did that one have a
17 number?
18 A. Eighteen three.
19 Q. Do you know where that route
20 -- what was on that route, that is, what
21 was its geographic location?
22 A. Basically. Basically Jackson,
23 Tennessee south to the Mississippi line

1 special seat. Do you know what I'm
2 talking about?
3 A. No.
4 Q. Some kind of suspension or
5 seat?
6 A. Not particularly, no.
7 Q. Are there different types of
8 vehicles?
9 A. There are all -- at that time,
10 they were all Hino trucks that as far as I
11 could see they're basically the same
12 trucks.
13 Q. Okay. Well, he claims that
14 there is some kind of seat that absorbs
15 some of the shock when you drive it. It's
16 got a name, but I can't remember it.
17 A. Okay.
18 Q. Do you know what I'm talking
19 about?
20 A. No. It could be -- I just --
21 I mean, I don't --
22 Q. Air ride, does that make --
23 have you heard of that name?

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1 and it crossed the eastern side of
2 Memphis.
3 Q. So it was Tennessee and
4 Mississippi?
5 A. Just Tennessee. He didn't go
6 into Mississippi.
7 Q. Oh, it didn't go into
8 Mississippi?
9 A. It seems like one year it was
10 one store right across the line, but
11 basically Tennessee.
12 Q. Okay. So all the stores were
13 either in or near Tennessee?
14 A. Right.
15 Q. Okay. And how many -- about
16 how many stores would there be?
17 A. Thirty, just a ballpark.
18 Q. Sure. That's fine. So Terry
19 worked there in 2004, correct?
20 A. Correct.
21 Q. And he's testified in this
22 case and he said that when he came, he
23 asked for a truck with some kind of

1 A. It could be, yeah.
2 Q. Okay. And he says that in
3 2004, he was in a truck that had that type
4 of seat, that suspension in that seat.
5 Does that make sense?
6 A. Makes sense.
7 Q. Okay. But he said in 2005,
8 y'all changed his vehicle so that he
9 didn't have that. Now, do you know why
10 they would change vehicles in 2005?
11 MR. GERHARDT: Object to the
12 form.
13 Q. You can answer. He just does
14 that to -- for the record and to annoy me.
15 MR. GERHARDT: For the record.
16 A. As far as whatever we do with
17 the trucks or what I do with the trucks,
18 they are assigned according to need on the
19 routes. The longer routes get newer
20 trucks, and I did have probably -- could
21 have had that year where a longer route
22 needed a truck, that particular route.
23 Eighteen three didn't go that many miles

5 (Pages 17 to 20)

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1 from home. So if you had a problem with
2 the truck, I don't remember any problem
3 with it, but if I made the change, that's
4 probably why it was.
5 Q. Okay. So what you are saying
6 is you had nine or more routes?
7 A. Right.
8 Q. And so you would make the
9 truck assignments based on the length of
10 the route, that is, you would assign the
11 newer trucks to the longer routes?
12 A. Right.
13 Q. Is that correct?
14 A. Right.
15 Q. So if Terry's vehicle changed,
16 it was for that reason?
17 A. Sure.
18 Q. Okay. Now, did Terry ever
19 mention anything to you about -- in 2005
20 about an air ride seat or make a request
21 for one?
22 A. Not that I remember, but that
23 was a long time ago.

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1 Q. That's exactly right. That
2 was a long time ago. If he had made that
3 request, is there any reason why he
4 couldn't, that you know of, that he could
5 not have received that type of vehicle?
6 MR. GERHARDT: Object to the
7 form.
8 Q. You can answer. I mean, I'm
9 not in the plant business.
10 A. What I answered before was the
11 trucks were assigned according to the need
12 and how far they went from home. So if I
13 changed them around, that was the reason.
14 But, like I say, that would be -- that
15 would be the reason, putting the trucks
16 where they were needed the most.
17 Q. Tell me, if you can, do you
18 have the -- approximately the same
19 salesmen that you had in 2004 and 2005, or
20 do they change over a lot?
21 A. They change over quite a bit.
22 Well, let me think. I've got one, two,
23 three -- no, I have got -- majority of the

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1 them were the same.
2 Q. Let's do it this way, if we
3 can. Can you tell me who's working for
4 you now and then, if you would, just
5 identify anybody who wasn't working in
6 2004 or '5. Can you do that? I know Les
7 is working?
8 A. Les is still working for me.
9 Q. Okay. And he took Terry's
10 route, right?
11 A. He took route eighteen three.
12 Q. That was the one Terry was
13 working?
14 A. Correct.
15 Q. I don't mean it like he owned
16 it.
17 A. Right.
18 Q. I just mean he succeeded
19 Terry --
20 A. Right.
21 Q. -- in taking over that route.
22 Okay.
23 A. Stanley Johnson still works

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1 for me. He worked for me now and then.
2 Q. What route is he? Is he --
3 A. Eighteen one.
4 Q. Okay.
5 A. Willie Hughes, eighteen oh
6 now. He was on a different route before,
7 but he worked for me both times.
8 Q. Eighteen hundred?
9 A. Uh-huh.
10 Q. How old is Les, about, if you
11 know?
12 A. Thirty-five.
13 Q. How about Stanley?
14 A. About fifty.
15 Q. Willie?
16 A. Fifty-six or -seven probably.
17 Q. Okay. I'm sorry, keep going.
18 A. Johnny Roy Finlinson worked
19 for me then, but he does not work for me
20 now. He was promoted to a mini station
21 manager this year. He's --
22 Q. What route did he run?
23 A. He ran eighteen two. And he's

6 (Pages 21 to 24)

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1 sixty, sixty plus, a little over sixty,
2 sixty-one or -two.
3 Q. Now he's a station manager?
4 A. Right, a mini station manager.
5 Q. Mini, what does that mean?
6 A. Something we're doing new with
7 one or two -- one or two or three trucks
8 just trying to better service, breaking
9 down some longer routes, trying to better
10 service. One, two or three trucks I have
11 in town and a big station ships them to
12 their plants. They don't grow anything
13 there. It's shipped to them.
14 Q. Okay. See if you have got --
15 this is the way I understand it. If
16 you've got a long route, then you can get
17 a long way from your plants so that if you
18 run out of plants, you have to come back,
19 all the way back to get some more?
20 A. Right.
21 Q. And this is a way to have a
22 station further out so that you wouldn't
23 have to drive as much just to get plants,

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1 is that a fair way of saying it?
2 A. Pretty much, yeah.
3 Q. Okay. All right. Keep going.
4 After Johnny, who else?
5 A. Let's see. Four.
6 Q. Where is he a mini station
7 manager, by the way?
8 A. Salem, Illinois.
9 Q. Is that off of your territory?
10 A. About half of it was.
11 Q. Okay.
12 A. Eighteen five, Tony Brown is
13 on it now, and he worked for me then and
14 now.
15 Q. How old is he?
16 A. You are going to get me in
17 trouble there. Sixty plus.
18 Q. Okay.
19 A. Eighteen six is James Decouto.
20 Q. Can you help me with that
21 spelling?
22 A. D-e-c-o-u-t-o.
23 Q. Thank you.

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1 A. He -- I'm not positive. He
2 was there in 2005. I don't remember about
3 '4. And eighteen seven --
4 Q. How old is he?
5 A. Forties.
6 Q. Okay.
7 A. Eighteen seven is James --
8 James has changed. James was on eighteen
9 six at that time. Now he's on eighteen
10 seven.
11 Q. Okay. Who's on eighteen six?
12 A. Eighteen six now is Michael
13 Phillips. And he's new this year.
14 Q. Okay. He was just hired?
15 A. Just hired.
16 Q. How old is he?
17 A. Twenty-seven or -eight.
18 Q. Okay.
19 A. Eighteen eight is Pat Gaines.
20 He was not with me at the time, and I did
21 not have that territory at the time.
22 Q. Okay. How old is he?
23 A. He's forty -- no, he's fifty.

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1 And then eighteen nine I no longer have.
2 I'm trying to think. I don't even
3 remember who was on it at the time when
4 Terry was there, and I don't have that
5 route. That territory I gave up, that's
6 all.
7 Q. You don't have that territory,
8 what did you say?
9 A. No, I gave -- I don't have
10 that territory anymore.
11 Q. Okay. Does somebody else?
12 Has it been reassigned to another manager?
13 A. Been assigned to another
14 manager.
15 Q. Okay. But at the time in
16 2004, you had it?
17 A. Had it.
18 Q. Do you know who worked there?
19 A. I don't remember who worked
20 it. A lot of them have changed around, so
21 I don't remember.
22 Q. All right. Now, Johnny
23 Finlinson, you said he was sixty or more,

7 (Pages 25 to 28)

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1 and he's been assigned as a mini station
2 manager?

3 A. Correct.

4 Q. How long has he been with the
5 company that you know of?

6 A. That I know of, he's been
7 there -- seems like he came to me in 2000,
8 2001, or one of the two, and he worked
9 years in the '70s and '80s.

10 Q. He's been a long time in the
11 plant business?

12 A. Long time employee, right.

13 Q. Is that right?

14 A. Right.

15 Q. And then Tony Brown, does he
16 have a lot of experience in the plant
17 business?

18 A. Right.

19 Q. Okay. Have Stanley, Willie,
20 Tony, James all been there the whole time
21 you've been the station manager?

22 A. James has not. The rest of
23 them have.

1 Q. Do you evaluate them in any
2 way?

3 A. We do at the end of season,
4 you are evaluating -- I go through each
5 salesman and see what I like or don't
6 like.

7 Q. Identify strengths and
8 weakness?

9 A. Identify, right, right.

10 Q. Do you sit down with them and,
11 you know, tell them what they need to do
12 to improve and stuff?

13 A. Usually, not always, but
14 usually.

15 Q. Did you ever do that with
16 Terry?

17 A. What I did with Terry was
18 throughout the season.

19 Q. Okay. Well, see, I guess I'm
20 trying to understand why y'all would
21 change a salesperson and reassign him to
22 another route maybe even out of that --
23 out from under that station manager. Can

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1 Q. And have they kept the same
2 routes?

3 A. No. Some have, some have
4 changed and some have kept the same ones.

5 Q. Well, I'm not in the plant
6 business, so I need your help. What --
7 why would you change the route of a
8 salesman who was -- they have a quota, a
9 sales quota, correct?

10 A. You have a goal, but that's
11 about all.

12 Q. Well, a sales goal in terms of
13 their commission, they get a certain
14 percentage of their sales, right?

15 A. Right.

16 Q. And that changes year to year,
17 what their goal is?

18 A. Right. They have a goal, but,
19 I mean, it's nothing more than a number on
20 paper. It could be -- yes.

21 Q. Do y'all evaluate them in
22 writing?

23 A. Not in writing, no.

1 you help me with that, why would you do
2 that?

3 A. Well, we have -- everything --
4 anything you can imagine. We have
5 salesmen that ask for -- to change. They
6 want to be closer to home, they want to be
7 further from home, they want to be --
8 different things.

9 Q. That's when the salesmen
10 initiates a change, though, correct?
11 That's one set of circumstances. But why
12 do y'all do it on an involuntary basis?
13 That's my question.

14 A. I'm not real sure. I guess
15 there would be times when another route
16 may better suit the salesmen, whether it's
17 long or short or starts earlier in the
18 year, later. I mean, just --

19 Q. Who makes that decision?

20 A. Usually I guess it would be
21 the station manager and sales manager.

22 Q. Well, Terry worked for you in
23 2004 and 2005, correct?

8 (Pages 29 to 32)

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1 A. Correct.
2 Q. How would you rate his job
3 performance on route -- was it eighteen oh
4 three?
5 A. Right.
6 Q. How would you rate that?
7 A. Had -- we had numerous
8 conversations about him not having --
9 things being in disarray, his stores not
10 being kept neat and clean, and, you know.
11 In all these stores we're given an area,
12 and we bring in fresh product, take out
13 everything that's bad, and we're -- that's
14 strictly, you know, the salesman decides
15 that, but it's pretty much left up to us.
16 And we had had numerous conversations
17 about him not picking up trash, not
18 picking up the bad stuff, stuff -- plants,
19 you know, this tall (indicating) that
20 looked terrible left on the route. And we
21 also bring back all of our trays and reuse
22 them and crates and reuse them and --
23 crates that onions come in, and had to

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1 stay on him about getting those back in,
2 and we just had talked about -- time and
3 time again about getting that done, and
4 you know, just no improvement was made.
5 Q. Tell me about your process
6 there for salesmen. Do you know what I
7 mean when I say a progressive disciplinary
8 process? Do you know what that means?
9 A. Not really.
10 Q. Well, Adam, do you have a
11 college degree?
12 A. Yes.
13 Q. Where did you go to college?
14 A. Auburn.
15 Q. And what did you get your
16 degree in?
17 A. Agri business, ag economics.
18 Q. Did you -- have you worked for
19 anybody other than Bonnie Plant?
20 A. I have.
21 Q. Have you ever worked for an
22 employer who uses some written
23 communication devices to rate and evaluate

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1 and advise their employees of their
2 expectations?
3 A. No.
4 Q. Okay. Well, there are --
5 imagine this, there are employers who do
6 use writings to evaluate and discipline
7 their employees and they -- even if it's
8 an oral, for example, the first step of
9 any process might just be a warning. And
10 although it's a warning, they may write it
11 out and get the employee to acknowledge
12 that they were counseled or given a verbal
13 warning. Have you ever seen anything like
14 that?
15 MR. GERHARDT: Object to the
16 form.
17 Q. You can answer.
18 A. No.
19 Q. Do y'all have any kind of
20 forms at Bonnie Plant Farms that would
21 assist you in that process?
22 A. Today we do.
23 Q. When did those -- when did you

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1 begin using those?
2 A. I don't remember what year we
3 started.
4 Q. Okay. So y'all have personnel
5 forms?
6 A. Right.
7 Q. Have access to them off the
8 computer?
9 A. They're mostly sent to us in
10 a -- we have them. I guess we could get
11 them on the computer.
12 Q. Do y'all have an HR, human
13 relations, department?
14 A. Yes.
15 Q. If you have a question about
16 somebody's vacation or leave or if they
17 are out sick or something, is there
18 someone you can call?
19 A. Yes.
20 Q. Who is that, sir?
21 A. It's through our home office,
22 Alabama Farmers Co-Op. I'm not sure who
23 the person's name is.

9 (Pages 33 to 36)

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1 Q. So you haven't had any
2 occasion to speak to them?
3 A. No.
4 Q. Is that correct?
5 A. That's correct.
6 Q. Okay. And can you -- as a
7 station manager, do you have the authority
8 to write someone up, that is, put a
9 written warning or written disciplinary
10 notice in their personnel file?
11 A. Yes.
12 Q. Does each employee have a
13 personnel file, each salesmen have a
14 personnel file?
15 A. Yes.
16 Q. And have you ever had an
17 occasion to write someone up, get them to
18 sign it and acknowledge that this is
19 unsatisfactory behavior and it must be
20 improved upon?
21 A. No.
22 Q. Okay. Can you suspend a
23 salesman?

1 offer a job to someone?
2 A. I have to go through them
3 first.
4 Q. You have to get approval for a
5 slot or a budgetary --
6 A. Right.
7 Q. -- position, maybe to add a
8 route or something; is that correct?
9 A. Yes.
10 Q. So you've been a station
11 manager since approximately 1999, and to
12 date, you've never had a written
13 discipline of any salesperson; is that a
14 fair statement?
15 A. Right.
16 Q. Okay. And so you never had
17 any occasion or Mr. Watson's job
18 performance was never so bad that you were
19 required to write him up or make anyone
20 else aware of it, correct?
21 MR. GERHARDT: Object to the
22 form.
23 Q. Correct?

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1 A. I have the authority. But the
2 way our business works, you don't -- I
3 mean, you are working twelve, fourteen,
4 sixteen weeks out of the year is your main
5 time. You know, you really can't suspend
6 -- the job really has to be done by
7 somebody. But, yeah, I guess I would have
8 the authority.
9 Q. Can you make a decision to
10 fire --
11 A. Yes.
12 Q. -- and terminate an employee?
13 A. Yes.
14 Q. Do you have to have anybody
15 else's approval, Joe Stewart or anybody
16 else?
17 A. I do have to talk to them
18 about it first.
19 Q. To Joe?
20 A. Right. Joe or Mr. Kyle or
21 Dennis, somebody in management.
22 Q. Okay. And do you have what I
23 call hiring authority, that is, can you

1 A. I didn't write anybody up.
2 Q. Okay. So you didn't write
3 Terry up?
4 A. It was handled verbally. We
5 didn't write things up. And it was
6 verbally given to him numerous times.
7 Q. Okay. And the things you've
8 told me about that you verbally
9 communicated with Terry were that he --
10 his stores were not appropriately neat and
11 he didn't satisfactorily return the trays,
12 the containers, that held the plants.
13 Anything else?
14 A. Didn't keep his truck clean.
15 It was like a dumpster, dirty inside and
16 out. I say that in the cab as well as the
17 bed, not the outside of the truck.
18 Q. Now, did you ever have any
19 occasion to go to any of his stores?
20 A. Yes.
21 Q. Do you have a camera?
22 A. Do what?
23 Q. Do you have a camera?

10 (Pages 37 to 40)

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1 A. Yes.
2 Q. Did you take any photographs
3 of his stores?
4 A. No. That was before -- I do
5 now. Digital changed the whole works
6 there. Before it was film developed -- I
7 would say they probably had digital
8 cameras then, but I didn't have one, so --
9 Q. Any customer that Terry Watson
10 had on his route, did you ever get a
11 written complaint from any of them?
12 A. No, we don't get written
13 complaints from anybody.
14 Q. Okay. Well, did you get
15 verbal complaints from any of them?
16 A. Yes.
17 Q. Who?
18 A. Lowe's.
19 Q. Lowe's where?
20 A. Germantown Parkway, Memphis,
21 Tennessee.
22 Q. Do you remember the nature of
23 the complaint?

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1 A. Just bad plants, plants
2 overgrown and stuff that needed to be
3 picked up that wasn't salable left.
4 Q. Returns that weren't
5 collected?
6 A. Returns that weren't
7 collected.
8 Q. Okay. And the way it works at
9 Bonnie Plant, they sell on consignment.
10 So when they return a plant, that comes
11 off their -- the salesmen's --
12 A. At the independents, smaller
13 stores, it does. Today all the big boxes
14 is pay by scan. So we get paid by what
15 goes through their computer. So we still
16 pick them up, but it's not paper. You
17 don't write pick tickets. In all the big
18 boxes we deliver whatever they need, pick
19 up whatever is bad and there is no
20 paperwork whatsoever.
21 Q. Okay. Well, do you recall if
22 Terry met his sales goals for 2004 and
23 2005?

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1 A. Best of my knowledge, on the
2 spring sales of '04, he had a decrease
3 from the year before and an increase in
4 spring sales of '05.
5 Q. An increase from '04 or an
6 increase from 2003?
7 A. Both.
8 Q. Okay. He sold three hundred
9 -- over three hundred thousand dollars
10 worth of plants in 2005, correct?
11 A. I don't remember the exact
12 number. I was thinking it was around
13 three hundred thousand. I don't remember
14 the number.
15 Q. Do you know a gentleman named
16 Tate?
17 A. Yes.
18 Q. What's his last name?
19 A. Gatlin, I think.
20 Q. What is his job?
21 A. Safety director.
22 Q. Is he over your trucks?
23 A. He's over the safety of Bonnie

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1 Plant Farm.
2 Q. Over the whole country?
3 A. Uh-huh.
4 Q. Is that yes?
5 A. Yes.
6 Q. Okay. And so he handles the
7 paperwork for -- your drivers have to have
8 an annual card that shows they're -- from
9 a health standpoint they're able to
10 operate a motor vehicle?
11 A. It's biannual.
12 Q. It's twice every two years?
13 A. Once every two years.
14 Q. Okay. I'm sorry. But they
15 have to have a card and be examined by a
16 physician, correct?
17 A. Correct.
18 Q. Be certified as being in the
19 state of health that they can operate a
20 vehicle?
21 A. It's a DOT physical.
22 Q. Okay. So he handles, he deals
23 with the salesmen from that aspect,

11 (Pages 41 to 44)

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1 correct?
2 A. Correct.
3 Q. Okay.
4 A. His office does.
5 Q. Where is his office?
6 A. Union Springs.
7 Q. Oh, okay. Well, did you know
8 that Terry underwent some surgery in 2005,
9 in the fall of 2005?
10 A. I knew he was going to have
11 it, but I don't particularly remember that
12 he did or didn't.
13 Q. And he had a knee replacement
14 and had some surgery done on his feet.
15 Were you aware of that?
16 A. I was aware he was going to
17 have them, but I didn't know that --
18 Q. Yeah. Okay. All right. Now,
19 when does y'all's season start in Bells,
20 Tennessee?
21 A. End of January, first of
22 February.
23 Q. When do your drivers, when are

1 really what I'm asking you from that
2 perspective. Are there any documents that
3 would show when the season began and when
4 the salesmen were to report in 2006 for
5 the spring season in Bells, Tennessee?
6 Are there any documents that you're aware
7 of?
8 A. No. Some salesmen would be --
9 I mean, like new routes that, you know,
10 they wouldn't start getting -- wouldn't
11 start being paid a draw or whatever until
12 their route actually started. But I don't
13 really know --
14 Q. Well, then, there would
15 certainly be payroll records that would
16 reflect when the route started, correct?
17 A. Well, no. Some salesmen would
18 receive -- draws could start -- see,
19 our -- the last money is not paid -- on
20 the draw checks, they go through January
21 from the previous year. So, no, it
22 wouldn't be.
23 Q. Well, so you're telling me

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1 they required to report for work?
2 A. Within that same time frame,
3 just according to where the routes are,
4 end of January to during February
5 sometime.
6 Q. What, do y'all send out a
7 letter telling them to report? What do
8 y'all do?
9 A. Usually verbal contact on the
10 phone because each route is different. I
11 mean, I have got routes that go to
12 Arkansas. Generally plants sell from west
13 to east or whatever -- north -- I mean
14 south to north. So according to each
15 route, you sort of talk to them. In
16 January the weather fluctuates. So you
17 may tell them, you know, we'll -- we stay
18 in constant contact, may let you know to
19 come next week or if the weather is
20 terrible, you come next week and that kind
21 of thing.
22 Q. Well, Mr. Alley, I normally
23 tend to deal in documents, so that's

1 that, to your knowledge, there are no
2 written documents that -- from Bonnie
3 Plant Farms that would indicate when the
4 season began and when the salesmen were to
5 report to work in -- for Bells, Tennessee
6 in the calendar year 2006?
7 MR. GERHARDT: Object to the
8 form. Asked and answered.
9 Q. You can answer. You don't
10 know of any?
11 A. Not that I'm aware of, no.
12 Q. Okay. Well, just make it
13 Exhibit 1.
14 (Whereupon, Plaintiff's
15 Exhibit 1 was marked for
16 identification.)
17 Q. Did you have any contact with
18 Terry Watson in the fall, in the winter of
19 2005 or before the season started in 2006?
20 A. I don't -- I don't remember if
21 I did or not. I mean, that's --
22 Q. You got a phone number for
23 him, don't you?

12 (Pages 45 to 48)

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1 A. I don't today, no.
2 Q. Well, you did in 2005, didn't
3 you, you have a cell phone for him?
4 A. Seems like I had a home phone
5 for him. I don't remember cell phone.
6 Q. You can't contact -- how do
7 you contact your salesman if you need to
8 talk to him during the week? Does he have
9 a radio or something?
10 A. Oh, are you talking about
11 during the season?
12 Q. Yeah.
13 A. During when he's working,
14 sure, we had cell phones.
15 Q. Well, that wouldn't change,
16 would it, when he went home?
17 A. Sure, we have a lot of them
18 have cell phones and -- several that use
19 one service in Tennessee and that number
20 doesn't work, doesn't work when they're
21 home.
22 Q. Okay. You have an address for
23 him, don't you? You know where to contact

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1 him, correct? You can write him a letter,
2 correct?
3 A. Yes, I could, yes.
4 Q. Did you have any
5 correspondence with Terry Watson about his
6 health prior to the 2006 season?
7 A. Not that I remember, no.
8 Q. Did you make any decision or
9 make any recommendation as to Terry
10 Watson's employment with Bonnie Plant
11 Farms for the year 2006?
12 A. Yes, I had made Joe Stewart
13 aware that I didn't want to bring Terry
14 back for that season.
15 Q. When did you do that, sir?
16 A. I don't remember exact dates.
17 I would definitely say it was early fall
18 of that year.
19 Q. And is there any writing,
20 e-mail or letter about that decision and
21 recommendation?
22 A. No.
23 Q. Why didn't you want to bring

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1 him back?
2 A. Prior performance.
3 Q. And what about his prior
4 performance led you to that conclusion?
5 A. Just continually not doing
6 things that I asked him to do, which were
7 straighten up the stores, clean up the
8 stores, clean up his truck, oversee his
9 helper loading the truck. Like I said,
10 keeping the trunk clean, keeping the
11 stores -- keeping the junk out of the
12 stores, the crates and trays picked up.
13 Q. Did you ever have any
14 conversation with Terry Watson where you
15 told him that you were going to recommend
16 that he not be returned to your
17 supervision?
18 A. I -- I did in the spring of
19 '05 when -- after numerous times of having
20 that same conversation, had that -- you
21 know, that that's what I intend to do. If
22 you don't do better, I'm not going to
23 bring you back. But outside that, no, I

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1 didn't have any conversation with him in
2 the fall of '05.
3 Q. So this gentleman was an
4 underperformer for you for two years, and
5 there is no writing that reflects any
6 aspect of his underperformance, correct?
7 A. Correct.
8 Q. We just have to take your word
9 for it, correct?
10 MR. GERHARDT: Object to the
11 form.
12 Q. You can answer.
13 A. I guess, sure.
14 Q. I mean, there was nobody else
15 in the room when you were talking to
16 Terry, was there?
17 MR. GERHARDT: Object to the
18 form.
19 A. I don't remember. I would say
20 it was -- that conversation took place
21 enough I'm sure there was probably
22 somebody around, I don't remember who,
23 but --

13 (Pages 49 to 52)

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1 Q. Can you presently name any
2 witness to any of these conversations?
3 A. No, not that I remember, no.
4 Q. Okay. So you spoke with Joe
5 Stewart and told him you didn't want to
6 bring Terry back in 2000 -- for the 2006
7 season, correct?
8 A. Correct.
9 Q. Did you speak with anyone
10 other than Joe Stewart?
11 A. Not that I recall, no.
12 Q. Do you recall when it was you
13 made the recommendation other than the
14 fall of 2005?
15 A. That's all I remember.
16 Q. Okay. Do you know why Terry
17 wasn't told that he wasn't returning, do
18 you know?
19 A. I don't know when he was told.
20 Q. Let me show you what I've
21 marked as Exhibit 1 to your deposition.
22 Have you ever seen that letter that's
23 dated January 10th?

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1 A. (Reviewing document.) Okay.
2 What was your question now?
3 Q. Have you ever seen that letter
4 before today?
5 A. No.
6 Q. Well, it appears from your
7 reading of that letter that Mr. Watson
8 hadn't been told as of January 10th that
9 he wasn't returning, correct?
10 MR. GERHARDT: Object to the
11 form.
12 A. Looks like this letter was
13 written on January 10th. I have no idea
14 when he was told.
15 Q. When was Les assigned to
16 Terry's route in Tennessee?
17 A. I don't remember dates, but
18 starting of the spring, starting of the
19 2006 season, which I don't -- I mean, I --
20 Q. Well, was he already working
21 for Bonnie Plant?
22 A. Yes.
23 Q. What route had he worked in

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1 2005?
2 A. It was an Illinois route. The
3 numbers have changed around so much. I
4 believe it was eighteen five at the time.
5 Q. Was that under your
6 supervision?
7 A. Yes.
8 Q. So did you have to hire
9 someone to take Les' route then in
10 Illinois?
11 A. I did. I hired the guy named
12 Jerry Brogland. I think it was Jerry
13 Brogland. That route has changed over a
14 few times, but seems like he was a sixty
15 or so gentleman and he worked for
16 Tennessee Farmers Co-Op and I hired him.
17 Q. You hired Jerry Brogland to
18 replace Les, correct?
19 A. Correct.
20 Q. All right. And Les replaced
21 Terry Watson, correct?
22 A. Correct.
23 Q. And Les is approximately

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1 thirty-five years old?
2 A. Approximately.
3 Q. How long had Les worked for
4 Bonnie Plant Farms before he replaced
5 Terry?
6 A. Three or four years. Three
7 years, I think.
8 Q. Under your supervision?
9 A. Most of it.
10 Q. Does he have a college degree?
11 A. I don't -- I don't think so.
12 Q. Who hired -- did you hire Les?
13 A. No. I did hire him to come
14 to -- for that route. But, no, he was
15 hired by -- he was a helper in I think
16 Arizona at the time, and he came to me as
17 a route man.
18 Q. I mean, did you know him?
19 A. No.
20 Q. Before he went to work for
21 you?
22 A. No.
23 Q. Who assigned him to work under

14 (Pages 53 to 56)

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1 your supervision?
2 A. There was a previous salesman,
3 had to fire someone, let someone go, and I
4 don't really remember. I gather it would
5 have been -- was Joe Stewart. It was --
6 after the season started, someone couldn't
7 handle a job and I had to replace him
8 pretty quickly, you know, pretty quickly.
9 And so he was a helper in I believe it was
10 Arizona.
11 Q. Okay. Have you had occasions
12 to fire route salesmen?
13 A. Yes.
14 Q. That worked under your
15 supervision?
16 A. Yes.
17 Q. Can you name any of the people
18 that you have fired?
19 A. Let me think about it a
20 minute. No, not really, I mean, it's been
21 several, but it's been that long ago.
22 That was probably the last one, so I don't
23 remember the names.

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1 Q. Well, are there records that
2 would reflect that they worked for you and
3 were fired?
4 A. Records?
5 MR. GERHARDT: Object to the
6 form.
7 Q. Yeah.
8 A. They worked for me.
9 Q. Personnel files that would
10 show they were terminated?
11 MR. GERHARDT: Object to the
12 form.
13 A. Probably not. I know there
14 would be records that show they worked for
15 me.
16 Q. Could we get their names?
17 A. Yeah, we could get names.
18 Q. Okay. I mean, can you provide
19 those to Mr. Gerhardt?
20 A. I would think our personnel
21 department could get that.
22 Q. Okay. That's all I'm asking.
23 I don't know who they were, so --

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1 A. Right.
2 Q. So if we could identify them,
3 that would be a help to me.
4 And any of those people, did
5 you sit them down before you fired them
6 and tell them look, you're not getting the
7 job done, this is what I need you to do
8 and if you don't do it, you're going to be
9 fired? Did you do that?
10 A. Yes.
11 Q. Okay. Did you make any
12 writing?
13 A. No.
14 Q. Okay.
15 (Whereupon, Plaintiff's
16 Exhibit 2 was marked for
17 identification.)
18 Q. Let me show you what I've
19 marked as Exhibit 2. Have you ever seen
20 that letter before today?
21 A. No.
22 Q. Do you agree with me that
23 Terry Watson makes a written complaint of

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1 age discrimination in this letter? Do you
2 agree with that?
3 A. It states he believes --
4 that's his belief, yes.
5 Q. Okay. Now, have you had any
6 training about employment practices?
7 MR. GERHARDT: Object to the
8 form.
9 Q. You can answer.
10 A. What are you --
11 Q. Well, do you know that age
12 discrimination is illegal?
13 A. Sure.
14 Q. Have you been trained on age
15 discrimination?
16 A. I don't know that I've been
17 trained on it, no.
18 Q. Do you know what retaliation
19 is?
20 A. How would you define that
21 retaliation?
22 Q. Well, it's when you punish
23 someone for making a complaint of age

15 (Pages 57 to 60)

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1 discrimination, that's one type of
2 retaliation. Are you aware that that is
3 illegal?
4 A. Sure.
5 Q. The law protects you from
6 discrimination based on your age. It also
7 protects you when you make a complaint of
8 age discrimination. You're aware of that?
9 A. I don't know that I'm -- I
10 realize it's -- no, I don't know that I'm
11 aware of that, but I realize it's common
12 sense, but, I mean --
13 Q. And, in fact, today you're
14 here at my request in an age
15 discrimination case. And if you give
16 testimony that Bonnie Plant does not like,
17 they cannot punish you for your testimony.
18 Are you aware of that?
19 A. I am now.
20 Q. Were you before?
21 A. Just never really thought
22 about it really. I knew I was going to do
23 the right thing and everything else will

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1 take care of itself.
2 Q. How old are you, Adam?
3 A. Forty-one.
4 Q. If Terry is sixty-two, would
5 you agree with me that you're
6 substantially younger than him, I mean
7 twenty-one years?
8 MR. GERHARDT: Object to the
9 form.
10 Q. Would that be a fair
11 statement?
12 A. I'm younger.
13 Q. Yeah. And in 2005, you were,
14 what, thirty-eight?
15 A. If that's -- you do the math.
16 If that's right, that's right.
17 Q. Okay. Now, Terry Watson
18 received a commission when he worked under
19 your supervision, correct?
20 A. I would assume so.
21 Q. All route salesmen can earn a
22 commission, correct, that's how they get
23 paid?

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1 A. Right.
2 Q. They get paid a draw against
3 their commission --
4 A. Right.
5 Q. -- correct? And if you don't
6 sell enough plants, you can wind up the
7 year upside-down, right?
8 A. Sure.
9 Q. Okay. But if you meet your
10 sales goal, then you get a higher
11 commission than salesmen who do not meet
12 their sales goal, do you agree with that?
13 A. Yeah, strictly percentages. I
14 mean, it's still a numbers thing.
15 Q. Yeah. But actually the
16 commission changes, you get a higher
17 commission rate if you meet your sales
18 goal, correct?
19 A. Our pay plan is different.
20 Some -- most of the time. But most of the
21 time it would just be -- if you're in X
22 percent, the higher the sales were,
23 obviously the higher the salary would be

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1 just based on the numbers.
2 Q. And y'all change the routes
3 sometimes annually, correct?
4 A. Sometimes, you're correct.
5 Q. And you compare how the route
6 performed to the year prior, correct?
7 A. Correct.
8 Q. Now, sometimes you may make
9 changes that may affect the route,
10 correct, either negatively or positively?
11 A. Correct.
12 Q. I mean, you may add stores or
13 delete stores?
14 A. Right.
15 Q. But you still make that
16 comparison in order to try to evaluate a
17 salesman's performance, correct?
18 A. Right. And when we make that
19 comparison, if it's changes, it would be
20 made considering any changes. I mean, it
21 would be -- if a territory was taken off,
22 we took it off of the year before. I
23 mean, there were equal comparisons.

16 (Pages 61 to 64)

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1 Q. Okay. So you try to compare
2 apples to apples?
3 A. Apples to apples.
4 Q. Sure. Okay. I tell you what,
5 Mr. Alley, I have one-hour tapes and we're
6 at about fifty-five minutes. So with your
7 permission, I'm going to take a break and
8 change tapes. I'm not going to keep you
9 much longer, but I do need to get some
10 more information.
11 A. We'll take a break and run to
12 the restroom.
13 MR. ROBERSON: Let me just do
14 this. We're going to take a break here.
15 It's 12:35. Off the record.
16 (Whereupon, a break was had
17 from 12:35 p.m. until 12:43
18 p.m.)
19 (Whereupon, Plaintiff's
20 Exhibits 3 - 7 were marked for
21 identification.)
22 MR. ROBERSON: All right.
23 This is tape two of the video deposition

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1 of Adam Alley. It's 12:43 p.m.
2 Q. Mr. Alley, we took a break.
3 But, now, is it Luther Stuart, Luther L.
4 Stuart, is that Butch?
5 A. Who I refer to as Butch, yes.
6 Q. Okay. And he had this route
7 in 2003?
8 A. Right.
9 Q. In Bells, Tennessee?
10 A. Right.
11 Q. I'm going to show you what
12 I've marked as Exhibit 4 and ask you if
13 this is his commission statement for his
14 route, Luther L. Stuart, in 2003. I hope
15 it is.
16 A. (Reviewing document.)
17 Q. Do you recognize that
18 document?
19 A. That's what it says. It says
20 August of '03, Luther Stuart.
21 Q. Okay. What were his sales
22 figures for this route in 2003?
23 A. Basically two hundred

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1 sixty-three thousand.
2 Q. Okay. And was he doing a good
3 job for you up there on that route?
4 A. He was doing a pretty good
5 job.
6 Q. Okay. Then I'm going to show
7 you what I've marked as Exhibit 7 to your
8 deposition. And this is Terry Watson's
9 commission from Bonnie Plant statement for
10 the year 2004 when he took over Mr.
11 Stuart's route; is that correct?
12 A. Commission for spring of 2004,
13 correct.
14 Q. All right. What was his sales
15 figure for 2004 on that same route?
16 A. Two hundred fifty-five
17 thousand.
18 Q. Okay. So he was just under
19 Mr. Stuart; is that correct?
20 A. According to that, right.
21 Q. Okay. Then I'll show you
22 Exhibit -- what I've marked as Exhibit 6,
23 which is Terry Watson's 2005 commission

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1 statement.
2 A. Okay.
3 Q. And what is his sales -- is
4 that correct? Is that his 2006?
5 A. Yeah, looks to be just like
6 the rest of them. It's three hundred six
7 thousand.
8 Q. Okay. So that's an increase,
9 correct?
10 A. Right. The second one is an
11 increase. First one was a decrease.
12 Q. The first one was a five
13 thousand dollar decrease?
14 A. If that's what the math was,
15 yeah.
16 Q. And the second one is about a
17 fifty-six thousand or forty-six thousand
18 dollar increase?
19 A. Okay.
20 Q. Is that correct?
21 A. If that's --
22 Q. Yes?
23 A. If the math is done right,

17 (Pages 65 to 68)

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1 that's right.
2 Q. All right. Then Terry, you
3 said you didn't want him, told Joe Stewart
4 you didn't want him, and he was
5 reassigned, that is, he left your
6 territory, correct?
7 A. He left.
8 Q. In 2006?
9 A. He left route eighteen three,
10 right.
11 Q. Okay. And I'll show you
12 what's been marked as Exhibit 5. And this
13 is the commission for Terry Watson for the
14 spring of 2006, and I believe that he was
15 reassigned to take over a route in
16 Montgomery or near Montgomery. But is
17 that Mr. Watson's commission statement for
18 2006?
19 A. Same as the rest of them,
20 that's what it says, yes.
21 Q. Okay. And what was his sales
22 figures for 2006?
23 A. Two fifty-two.

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1 Q. Well, don't they get paid on
2 collected?
3 A. Well, every number I read off
4 was off the sales number. So all of them
5 would be adjusted down, that's correct.
6 But every one of them would be -- would go
7 down.
8 Q. Okay. Just for record
9 purposes, will you identify the document
10 number and then the collected sales
11 figures?
12 A. Okay. Make it by year,
13 Document 7 was three fifty-three -- sorry,
14 Document 7 was two hundred fifty-three.
15 Q. Is that Luther Stuart?
16 A. No, that was Terry Watson.
17 Q. Terry Watson for what?
18 A. That was for 2004.
19 Q. Okay. Can you go to Luther
20 Stuart's sales, collected sales, in 2003?
21 A. At that time -- I think at
22 that time we paid on deliveries, so his
23 was actually deliveries. It changed some

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1 point in there. His would be deliveries
2 in 2003.
3 Q. So Terry may have actually
4 collected more than -- or more than Luther
5 in 2003, but there is a change in the
6 reporting from that -- from those two
7 years; is that correct?
8 MR. GERHARDT: Object to the
9 form.
10 Q. We don't know what Luther's
11 collecteds are in 2003, do we?
12 A. Well, this just says sales, it
13 doesn't have that line, so they could have
14 taken it out. I don't -- I'm not sure on
15 how we were paid. This says -- just says
16 sales were in 2004, it says sales and
17 collected. It's making a difference.
18 Q. Okay. In 2005, what were
19 Terry Watson's collected?
20 A. 2005, three hundred and two
21 thousand.
22 Q. Okay. And in 2006 what was
23 his collected sales?

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1 A. A hundred and seventy-three
2 thousand five hundred.
3 Q. That's a substantial decrease
4 from 2005, correct?
5 A. Right. Now, on collections,
6 just so you know, on collections of
7 independents, that's the salesmen does the
8 collecting. So it looks like the sales
9 wasn't -- you know, what the final -- and
10 this is a -- they are paid on ninety
11 percent. So the difference there is
12 probably outstanding independent money
13 that it is the salesman's responsibility
14 to collect.
15 Q. Now, I'm going to show you
16 what has been marked as Exhibit 3, which
17 is Leslie Branham's commissions for this
18 eighteen oh three route for 2006. And
19 what did he collect on that route in 2006?
20 A. Three hundred and
21 seventy-eight thousand.
22 Q. Okay. And what did he receive
23 in commissions? What are his commissions

18 (Pages 69 to 72)

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1 on that, eighty-seven?
2 A. His gross commission?
3 Q. Yes.
4 A. Eighty-two.
5 Q. Eighty-two. Okay. What are
6 Terry Watson's commissions, gross
7 commissions, in 2006?
8 A. Gross commission, twenty
9 thousand eight hundred sixteen dollars.
10 Q. And is he actually upside-down
11 for the year, that is, his draws exceeded
12 his commissions?
13 A. At the time of this, it did.
14 Q. So based on these changes, Mr.
15 Watson has been impacted negatively,
16 correct?
17 MR. GERHARDT: Object to the
18 form.
19 A. Well, you are not comparing
20 apples to apples.
21 Q. Well, he made less money in
22 2006 than he did in 2005, correct?
23 A. So did any salesman that sold

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1 recommended that he not be reassigned to
2 your territory, correct?
3 A. Correct.
4 Q. Do you know how much or how
5 the two routes compared, that is, Bells,
6 Tennessee and the route he's on for the
7 year 2005? Do you know how they compared,
8 how much was sold on each route?
9 A. 2005, I know what was --
10 Q. Sold in Bells?
11 A. Bells. But, no, the other
12 one, I don't.
13 Q. What was sold in Bells?
14 A. In 2005?
15 Q. Yes, collected. How much did
16 he collect?
17 A. The year that Terry was there?
18 Q. Yeah.
19 A. 2005, three hundred two
20 thousand.
21 Q. Okay. Do you know what was
22 sold on the route he's on now for 2005 in
23 2005?

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1 less in one year than he did the other.
2 Q. Yes, sir. But this change
3 wasn't voluntary, was it?
4 A. I have -- I don't know.
5 Q. You made the decision to send
6 him to another territory, correct?
7 A. I think most of the change
8 was -- let me see here.
9 MR. GERHARDT: His question
10 was just whether you made the decision to
11 change him to another territory.
12 A. Okay. Yes, I made that
13 decision.
14 Q. You would agree with me that
15 that decision cost Terry money, correct?
16 MR. GERHARDT: Object to the
17 form.
18 A. I can't say that it did or
19 didn't. That wasn't the only thing that
20 cost him money, but it could have.
21 Q. Well, I know you didn't
22 transfer him to Texas and assign him that
23 route. I understand that. You just

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1 A. No.
2 Q. Okay. Tell me, the route that
3 Mr. Branham is working now, were there any
4 changes to it from 2005 to 2006? Were any
5 stores added or deleted?
6 A. Best of my knowledge -- let me
7 think. Yeah, there was probably -- best
8 of my knowledge, there was some -- some of
9 both. Some taken away and some added to
10 it. I don't remember --
11 Q. Well, is there some way that
12 we can determine what stores were on the
13 route in 2005 and what stores were on the
14 route in 2006, sir?
15 A. I think so. I don't know how
16 long they keep that information.
17 Q. Well, if you're a lawyer like
18 me and you wanted that information, what
19 would you ask for?
20 A. 2005. Home office may still
21 have that. The store -- the customer list
22 for that year, I don't know how long they
23 keep them.

19 (Pages 73 to 76)

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1 Q. Would you ask for the customer
2 list for route eighteen oh three for 2005,
3 2006, is that what you would ask for?

4 A. Right.

5 Q. Okay. Who would have that,
6 who at Union Springs?

7 A. If it was available, Patty
8 Walker would have it.

9 Q. Well, why wouldn't it be
10 available? Don't y'all have computers
11 down there?

12 MR. GERHARDT: Object to the
13 form.

14 A. Sure. But information becomes
15 irrelevant at some point in time.

16 Q. Do you know what your policy
17 is about how long you retain information,
18 sir?

19 A. No, no.

20 Q. Okay. Other than Joe Stewart,
21 have you had any conversation with anybody
22 at Bonnie Plant about the job performance
23 of Terry Watson?

1 A. No.

2 Q. When did he leave, if you
3 know?

4 A. He worked -- best of my
5 knowledge, he worked with Terry part of
6 both years. I know maybe part of the
7 first year and the second year. Seems
8 like he worked with Les. The first trip,
9 Les kept him out a long time or whatever,
10 he didn't work that year. And then I
11 don't think he worked -- then he worked
12 again last year a little bit, helped me
13 out some last year, and I haven't seen
14 him. He just -- haven't seen him this
15 year at all.

16 Q. But is it fair to say that the
17 decision to sever the relationship was his
18 decision, that is, he wasn't fired?

19 A. Sure, no.

20 Q. It was a voluntary --

21 A. Right.

22 Q. -- quit or whatever?

23 A. Right.

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1 A. Not that I remember, no.

2 Q. Do you have to grow the plants
3 at your station?

4 A. Yes.

5 Q. How many folks do you have
6 that help you?

7 A. It varies, but anywhere from
8 six or seven at the beginning of the
9 season to fifteen or so as we get busier.

10 Q. And your route salesmen, do
11 they have a helper or someone to assist
12 them on their route?

13 A. Yes.

14 Q. Do you recall who Terry
15 Watson's helper was on his route?

16 A. I do. It was Michael Roades.

17 Q. R-h-o-d-e-s?

18 A. A-d-e-s, I think.

19 Q. R-o-a-d-e-s?

20 A. E-s, I think that's how it's
21 spelled.

22 Q. Okay. Is he still employed
23 with the company?

1 Q. Okay. And were there any
2 other people that worked with Terry other
3 than Michael at your --

4 A. I'm sure that -- I'm pretty
5 sure that first year, there probably was.
6 Seems like he had two helpers maybe at one
7 time. But, you know, that's -- really I
8 do the paperwork and stuff for them. But
9 that's -- they keep up with them as far as
10 if they're satisfied, they keep them. And
11 people come -- I mean, there is a lot of
12 turnover there. People come for a job,
13 but they don't really want to work
14 sometimes.

15 Q. And y'all's trucks, the Bonnie
16 Plant trucks, they have a GPS device in
17 them, correct?

18 A. Some -- at the time I don't
19 think -- I don't think they did during
20 this time, but they do now.

21 Q. Okay. Well, today you know
22 where the truck is and you know how many
23 hours a day it is moving, correct?

20 (Pages 77 to 80)

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1 A. On the ones -- right.
2 Q. That have that system?
3 A. That have that system.
4 Q. Do you get any kind of report
5 about the trucks, like --
6 A. No.
7 Q. Where does that information
8 go, to the home office?
9 A. If they have one, yeah, as far
10 as I know. I don't know where it goes. I
11 have the capability I can pull up and look
12 at them and see where they are on a map.
13 Q. On your computer?
14 A. On the computer.
15 Q. Okay. So if you need them,
16 you know where they are?
17 A. Most of the time. There is
18 places like self-service and everything
19 else, places where they do work and places
20 where they don't work.
21 Q. Like a phone?
22 A. Just like a cell phone. I
23 mean, but --

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1 Q. Have to have a satellite?
2 A. I don't understand that how
3 you cannot have a satellite, but there is
4 places that they don't.
5 Q. Okay. And when somebody is
6 working under your supervision, how do you
7 communicate with them, that is, do you
8 have an office at a location?
9 A. Yes.
10 Q. Where is that office, sir?
11 A. It's at the plant farm in
12 Bells, Tennessee.
13 Q. It's in Bells, your office?
14 A. Right.
15 Q. And that's where you normally
16 report to work?
17 A. That's where I am, right.
18 Q. And how -- if they're out on
19 the road, how do you communicate with
20 them? Can you e-mail them?
21 A. I can now if they have e-mail,
22 but they have to have access.
23 Q. They have to have a Blackberry

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1 or something so they can see it?
2 A. Right. Most of the time now
3 it's cell phone. It used to be, I mean,
4 primitively we used to have to call around
5 the stores and leave messages for them.
6 Q. They don't have a laptop in
7 their truck or anything?
8 A. They have a laptop now, but
9 it's something new this year. They don't
10 have Internet access all the time.
11 Q. Okay. Again, like a cell
12 phone?
13 A. Yeah, that and it's -- I mean,
14 it's something new, and they're figuring
15 out.
16 Q. Okay. And then, I mean, I
17 assume that there is times when you may
18 need to contact them, correct?
19 A. Yes.
20 Q. And so you normally reach them
21 by cell phone?
22 A. Cell phone.
23 Q. Okay. And can you -- what do

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1 you do if somebody -- let's say they
2 become ill and their wife becomes ill, are
3 there occasions when you have to
4 physically run a route for somebody?
5 A. Yes.
6 Q. I mean, that's part of your
7 job too?
8 A. Right.
9 Q. I guess that's happened from
10 time to time?
11 A. I has.
12 Q. I mean, a family emergency or
13 something?
14 A. Right.
15 Q. Did you ever have to do that
16 with Terry?
17 A. Not that I remember, no.
18 Q. Now, how long is the season,
19 the spring season up in Tennessee, when do
20 they stop?
21 A. Basically February to now we
22 run to about the 4th of July.
23 Q. Okay. And during that period

21 (Pages 81 to 84)

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1 of time, would a salesman work seven days
2 a week, or how would they work?
3 A. It varied according to sales
4 whether it was seven days a week or two
5 days a week, according to -- according to
6 his sales volume.
7 Q. They make their own schedule?
8 A. Pretty much, right.
9 Q. I mean, they don't have normal
10 hour they're required to work or anything?
11 A. They're required to take care
12 of the stores, so that's their schedule.
13 I mean, if it takes two days a week or if
14 it takes seven days a week, whatever it
15 takes.
16 Q. I wouldn't imagine you have
17 any routes that work two days a week, do
18 you?
19 A. Well, only -- early on and
20 maybe late, you know.
21 Q. When you are winding up or
22 gearing up?
23 A. Right.

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1 Q. Okay. But these like -- for
2 example, your customers include Home Depot
3 and Lowe's, correct, Wal-Mart?
4 A. Yes.
5 Q. So chain stores, correct?
6 A. Yes.
7 Q. And I'm going to say
8 high-volume stores for plants?
9 A. Right.
10 Q. Do you serve -- sell to
11 nurseries too?
12 A. Some.
13 Q. Would that be your
14 independents?
15 A. Independents would be anybody
16 from farm supply stores, cooperative
17 stores. I mean, we have some florists, we
18 have some -- anything you can imagine,
19 service station. I mean, most anybody
20 that wants to sell plants, we sell to a
21 wide variety of people.
22 Q. Okay. Now, when they go to an
23 independent, what you've described, you

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1 say they have to collect?
2 A. Right.
3 Q. Do they -- is there some
4 paperwork they have to do there and
5 physically get a check?
6 A. Right.
7 Q. How does that work?
8 A. The billing is handled from
9 the home office. It's the salesman's
10 responsibility to keep up with it and make
11 sure that they're paid on a timely manner.
12 And if they are not paying, you cut them
13 off from deliveries.
14 Q. You only extend credit for so
15 long?
16 A. So long.
17 Q. So how many days do you
18 normally extend credit?
19 A. Well, it's -- we don't have a
20 strict policy on that because it's sort of
21 according to the customer. We've had
22 customers for years that, you know, you
23 try to work with them. And then, of

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1 course, you have some, the newer they are,
2 probably thirty days.
3 Q. Now, and physically, these
4 salesmen have to get these racks out of
5 their truck and set them up in the stores,
6 correct?
7 A. Right.
8 Q. I mean, they stock the stores,
9 they don't just drop -- pull their truck
10 up and the people in Home Depot --
11 A. Right, that's the difference
12 between if I come in, I guess we have
13 salesmen as opposed to delivery boys or
14 delivery people. They are actually seeing
15 what they need. It's not put on their
16 truck this store gets this sixty and you
17 roll it off the rack and leave. You get
18 out and look to see what is on the rack
19 and pick up what is there and see what
20 they have sold and what they haven't sold
21 and more popular things which vary from
22 one store to the other in the same town
23 and leave what they -- leave what they

22 (Pages 85 to 88)

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1 reason and come up with what they need and
2 leave that.
3 Q. Do the salesmen get reports
4 sent to them about what has sold?
5 A. They do now.
6 Q. Okay. That's not something
7 they were doing in 2004 or '5?
8 A. No, it wasn't available to us
9 then at that time.
10 Q. Okay. So when the store scans
11 it, there is no information provided to
12 y'all?
13 A. It is now.
14 Q. Okay.
15 A. In the beginning, we came up
16 with pay by scan, and it was -- it's so
17 much like everything else when compared to
18 electronics to 2004. It's so much more
19 refined now than it was then. At that
20 time we got a report I think it was
21 weekly. And now you have daily reports,
22 and you have a lot more information
23 available today.

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1 Q. And so that's one of the
2 reasons for the computers in the trucks,
3 is to provide that information to the
4 salesmen?
5 A. Yes.
6 Q. That is they're linked in some
7 way to your network so that they can get
8 this information, help them stock the
9 stores and keep the inventory?
10 A. To some extent. It still only
11 tells you volume. It doesn't tell you
12 specific items. Specific -- it tells you
13 containers. It doesn't tell you specific
14 varieties and that type thing.
15 Q. It doesn't break it down into
16 like we need more marigolds or anything
17 like that?
18 A. No. Because the containers
19 are -- the bar codes, they scan -- the SKU
20 numbers and bar codes are a container
21 because the stores won't give you -- I
22 mean, we would have to have just for
23 vegetables a hundred, hundred and fifty,

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1 two hundred different numbers and that
2 overloads their system. So they give you
3 six or seven numbers, ten numbers that you
4 can use. So each container size has a
5 number. So you look up there and see they
6 sold -- you have volume.
7 Q. You know they sold how many
8 vegetables maybe and then how many plants?
9 A. How many five-inch cups,
10 four-inch cups, whatever.
11 Q. Okay. So they really have to
12 go to the stores and see what they need?
13 A. Right.
14 Q. And that makes it I assume
15 harder to know what to take --
16 A. Right.
17 Q. -- to the stores, right?
18 A. Right.
19 Q. So they may have to go twice a
20 week, whatever?
21 A. High volume stores, you're
22 going every other day. Every day on the
23 weekend. Every -- or whatever. But you

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1 are going -- the volume of the store, it
2 would be anywhere from one time to five
3 times a week probably.
4 Q. And that's something that's
5 important, these high-volume stores, I
6 assume y'all sell most of your plants on
7 the weekend; is that correct?
8 A. Most of the time, yes.
9 Q. That is, people like me who
10 work during the week, they are going to go
11 to the store on the weekend and get
12 something to work in their yard?
13 A. Right.
14 Q. And then so you may have to go
15 a couple times on Friday and on Sunday or
16 on Saturday and Sunday, right?
17 A. Right, sure.
18 Q. And so it's important that
19 your salesmen work on the weekend and they
20 can slow down during the week, would that
21 be a fair statement?
22 MR. GERHARDT: Object to the
23 form.

23 (Pages 89 to 92)

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1 A. No. When you are -- I mean,
2 you sell -- you know, there is times that
3 stores sell through the week just as well
4 as they do on the weekend.
5 Q. Now, so y'all are constantly
6 refining your system, information systems,
7 correct?
8 A. That's what they say.
9 Q. Okay. Well, do you feel like
10 it's gotten more helpful as the years --
11 over the years?
12 A. It has.
13 Q. Okay. And you got Tony Brown
14 who is over age sixty and he's working
15 under your supervision, right?
16 A. Correct.
17 Q. Is he doing a good job?
18 A. He does.
19 Q. You can do this job even at an
20 advanced relatively speaking age, correct?
21 A. Correct.
22 Q. Now, you're telling me, as I
23 understand it, that you made the decision

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1 you didn't want Terry back as a salesman
2 was based strictly on his job performance
3 for you, correct?
4 A. Correct.
5 Q. It had nothing to do with his
6 health problems? I mean, you didn't know
7 the status of his health, correct?
8 A. Correct.
9 Q. Okay. I just want to --
10 because, I mean, he had surgery that fall.
11 But that wasn't the reason that you said
12 you didn't want him back, correct?
13 A. That was not the reason,
14 right.
15 MR. ROBERSON: Okay. Well, I
16 think I'm through, Graham. Have you got
17 any questions?
18 MR. GERHARDT: I don't have
19 any.
20 MR. ROBERSON: We'll go off
21 the record. It's 1:12, and we'll go off
22 the record at this time.
23 FURTHER THE DEPONENT SAITH NOT

CERTIFICATE

STATE OF ALABAMA)
JEFFERSON COUNTY)

I hereby certify that the
above and foregoing deposition was taken
down by me in stenotypy, and the questions
and answers thereto were reduced to
typewriting under my supervision, and that
the foregoing represents a true and
correct transcript of the deposition given
by said witness upon said hearing.

I further certify that I am
neither of counsel nor of kin to the
parties to the action, nor am I in anywise
interested in the result of said cause.

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**DEFENDANT ALABAMA FARMERS COOPERATIVE,
INC. D/B/A BONNIE PLANT FARMS**

EX. 3

TO EVIDENTIARY SUBMISSION

In The Matter Of:

ARTHUR T. WATSON

v.

ALABAMA FARMERS COOPERATIVE, INC., ET AL.

NO. 2:07-CV-520-WHA

LES BRANHAM
April 9, 2008



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ARTHUR T. WATSON
ALABAMA FARMERS COOPERATIVE, INC., ET AL.

LES BRANHAM
April 9, 2008

Page 1

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CIVIL ACTION NO. 2:07-CV-520-WHA

ARTHUR T. WATSON,
Plaintiff,

vs.

ALABAMA FARMERS COOPERATIVE, INC.,
D/B/A BONNIE PLANT FARMS,
Defendants.

VIDEO DEPOSITION
OF
LES BRANHAM
April 9, 2008

REPORTED BY: Eleanor S. Pickett
Certified Shorthand Reporter
and Notary Public

Page 3

A P P E A R A N C E S

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Birmingham, Alabama 35203

I N D E X

PAGE:

EXAMINATION BY MR. ROBERSON 6

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S T I P U L A T I O N

IT IS STIPULATED AND AGREED,
by and between the parties, through their
respective counsel, that the video
deposition of LES BRANHAM may be taken
before Eleanor S. Pickett, Commissioner,
Certified Shorthand Reporter and Notary
Public;

That the signature to and
reading of the deposition by the witness
is waived, the deposition to have the same
force and effect as if full compliance had
been had with all laws and rules of Court
relating to the taking of depositions;

That it shall not be necessary
for any objections to be made by counsel
to any questions, except as to form or
leading questions, and that counsel for
the parties may make objections and assign
grounds at the time of trial, or at the
time said deposition is offered in
evidence, or prior thereto.

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I, Eleanor S. Pickett, a
Certified Shorthand Reporter of
Birmingham, Alabama, and a Notary Public
for the State of Alabama at Large, acting
as Commissioner, certify that on this
date, as provided by the Federal Rules of
Civil Procedure of the United States
District Court, and the foregoing
stipulation of counsel, there came before
me at the law offices of Burr & Forman
LLP, 3400 Wachovia Tower, Birmingham,
Alabama, on April 9, 2007, commencing at
11:36 a.m., LES BRANHAM, witness in the
above cause, for oral examination,
whereupon the following proceedings were
had:

MR. ROBERSON: All right.
This is the videotape deposition of Les
Branham. It's being taken at the offices
of Burr & Forman on April 9th, 2008. It
is presently 1:15 p.m. It's being taken
in the case of Arthur T. Watson, Terry

1 (Pages 1 to 4)

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1 Watson, versus Alabama Farmers
2 Cooperative, Inc., doing business as
3 Bonnie Plant Farms, defendant, CV 07-520.
4 My name is Jerry Roberson. I'm the
5 attorney for the plaintiff. I'm also
6 running the video camera. And I would ask
7 all counsel of record to state their name
8 and the party they represent.
9 MR. GERHARDT: My name is
10 Graham Gerhardt, I'm with Burr & Forman,
11 here on behalf of the defendant.
12 MR. ROBERSON: Would you swear
13 our witness, please, ma'am.
14
15 LES BRANHAM,
16 having been first duly sworn, was examined
17 and testified as follows:
18
19 THE REPORTER: Usual
20 stipulations?
21 MR. GERHARDT: Yes, ma'am.
22 MR. ROBERSON: Yes.
23

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1 EXAMINATION BY MR. ROBERSON:
2 Q. Mr. Branham, my name is Jerry
3 Roberson. I introduced myself before the
4 deposition. Have you ever given a
5 deposition before?
6 A. No, I have not.
7 Q. Let me tell you a couple rules
8 that we have today. I'm going to be
9 asking you questions. I need you to
10 answer my questions truthfully, but also
11 audibly, that is, don't shake or nod your
12 head or don't say uh-huh or huh-uh, okay?
13 A. Okay.
14 Q. And if I ask you a question
15 that you don't understand, please tell me
16 that.
17 A. Okay.
18 Q. And I'll try to rephrase it or
19 ask it a way that you do understand it.
20 Fair enough?
21 A. Yes.
22 Q. Because if you answer it, I
23 have to assume that you knew what I was

Page 7

1 asking you, okay?
2 A. Yeah.
3 Q. Les, what is your date of
4 birth?
5 A. [REDACTED]
6 Q. So does that make you how old?
7 A. Thirty-one.
8 Q. Thirty-one. And how long have
9 you worked at Bonnie Plant Farms?
10 A. This will be my fifth year.
11 Q. All that time have you been a
12 salesman?
13 A. Yes, sir.
14 Q. Okay. You're working now in
15 Bells, Tennessee?
16 A. Yes, sir.
17 Q. Did you start, begin your
18 career there with Bonnie Plant?
19 A. Yes, sir.
20 Q. Had you worked at any other
21 location than Bells, Tennessee?
22 A. I went to Arizona for three
23 weeks prior to being sent to Bells,

Page 8

1 Tennessee.
2 Q. Okay. What year was that,
3 sir?
4 A. 2004.
5 Q. Now, did you know the
6 gentleman I just talked to, LES BRANHAM,
7 before you went to work for him?
8 A. No.
9 Q. Never met him?
10 A. No.
11 Q. How did you get hired with
12 Bonnie Plant? I mean, did you apply for a
13 job?
14 A. Yes.
15 Q. Respond to an ad or something?
16 A. I have an uncle that worked
17 for Bonnie Plant Farms, and he referred me
18 to the company.
19 Q. Who is your uncle?
20 A. Michael Caddell.
21 Q. Where does he work?
22 A. In Alabama.
23 Q. Do you know where?

2 (Pages 5 to 8)

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1 A. Out of Union Springs.
2 Q. Okay. Is he in part of the
3 management team?
4 A. No.
5 Q. Is he a salesman?
6 A. Salesman, yes.
7 Q. Okay. He just reports to work
8 down in Union Springs?
9 A. Yes.
10 Q. Okay. How long has he worked
11 for the company?
12 A. Roughly thirty years.
13 Q. Just can't keep a job; is that
14 right?
15 A. That's right.
16 Q. All right. So he thought it
17 would be a good opportunity for you?
18 A. Yes.
19 Q. That's correct?
20 MR. GERHARDT: Objection.
21 Q. Tell me about the extent of
22 your education. How far did you go in
23 school?

Page 10

1 A. High school diploma.
2 Q. Okay. Have you had any
3 college?
4 A. No, sir.
5 Q. Have you had any prior sales
6 experience, that is, before you went to
7 work with Bonnie?
8 A. No.
9 Q. Did you have any previous
10 employment before you went to work? Did
11 you hold a full-time job?
12 A. Yes, sir.
13 Q. Where did you work?
14 A. I worked for a lawn care
15 company.
16 Q. What were you doing,
17 landscaping?
18 A. Yes.
19 Q. That's hard work, isn't it?
20 A. Yeah, can be.
21 Q. Okay. So cutting grass and
22 trimming and that kind of stuff?
23 A. Uh-huh.

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1 Q. Is that right?
2 A. Uh-huh.
3 Q. Is that yes?
4 A. Yes.
5 Q. I'll try to remind you.
6 A. Sorry about that.
7 Q. That's right. I'm not doing
8 it to annoy you. I'm just trying to make
9 a record.
10 A. I understand.
11 MR. GERHARDT: And crunching
12 the ice might not be the best idea either.
13 A. Okay.
14 Q. All right. Where did you work
15 for a landscape company?
16 A. In Augusta, Georgia.
17 Q. Are you married?
18 A. No.
19 Q. Now, you presently work in
20 Bells, Tennessee, correct?
21 A. Yes.
22 Q. Began working there in 2004?
23 A. Yes.

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1 Q. Was that the spring of 2004?
2 A. Yes, spring 2004.
3 Q. How do you know -- this is a
4 seasonal business, correct?
5 A. Uh-huh, yeah.
6 Q. How do you know when to come
7 to work? Do they send you a letter or do
8 they call you, what -- how do you know?
9 A. Usually have a date to be in
10 Bells.
11 Q. Report date?
12 A. Yes.
13 Q. How do they get that word to
14 you?
15 A. By telephone.
16 Q. They just call and say this is
17 your report date?
18 A. Yes.
19 Q. Okay. Is that normally Adam
20 that calls?
21 A. Yes.
22 Q. Okay. And then do you know
23 when the season ends, the spring season in

3 (Pages 9 to 12)

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1 Bells?
2 A. Yes.
3 Q. When is that?
4 A. Usually around the end of
5 June. This year it will be around July
6 10th, 11th, somewhere around there.
7 Q. Okay. And it varies by where
8 you're located in the country, that is,
9 your season, planting season varies?
10 A. Usually most of us end on the
11 same date. Now beginning, we all begin on
12 a different date.
13 Q. Yeah. The further south the
14 earlier you begin?
15 A. Yes.
16 Q. And the further north the
17 later you begin?
18 A. Yes.
19 Q. Okay. Do you work in the fall
20 season?
21 A. No.
22 Q. Does Bells have a fall season?
23 A. No.

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1 Q. Okay. And that varies too by
2 location?
3 A. Right.
4 Q. Correct?
5 A. Yes.
6 Q. So people that -- anyone that
7 doesn't want to work the fall season,
8 Bells would be a good place to work,
9 correct? I mean, they just have a spring
10 season, right?
11 A. Yes.
12 Q. You've worked for Adam for
13 four years?
14 A. Yes.
15 Q. This will be your fourth year?
16 A. That will be my fifth year.
17 Q. Fifth year. You're wearing a
18 Bonnie shirt. Is that required, or is
19 that just something that's available to
20 you if you want it?
21 A. It's available. We are -- we
22 are asked to wear Bonnie logos in the
23 stores to represent our company, yes.

Page 15

1 Q. So the staff will know you're
2 a Bonnie salesman, that type thing?
3 A. Yes, yes.
4 Q. And you're on route eighteen
5 oh three?
6 A. Yes.
7 Q. Before you were assigned that
8 route, what route did you work?
9 A. Route in Illinois, eighteen oh
10 five.
11 Q. And do you -- you get a
12 settlement sheet each year for commission
13 purposes, correct?
14 A. Yes.
15 Q. As a salesman for Bonnie
16 Plant, you're paid a draw against your
17 commission, correct?
18 A. Yes.
19 Q. They don't settle up with you
20 for the year until actually the next
21 calendar year, correct?
22 A. They will settle up with us at
23 the end of the season.

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1 Q. Oh, they will?
2 A. Yes.
3 Q. Okay. So let's say for 2008,
4 sometime after July but before December
5 31st, you'll know what your commissions
6 are?
7 A. Yes.
8 Q. And then that will be offset
9 by what you've drawn to date?
10 A. Yes.
11 Q. Now, a lot of folks -- if we
12 have a jury trial, probably nobody is
13 going to be a former Bonnie Plant
14 salesman, so I'm just trying to explain
15 how y'all get paid, okay?
16 A. Okay.
17 Q. Y'all get a draw. Is it
18 biweekly or weekly?
19 A. Biweekly.
20 Q. Okay. And that's a certain
21 amount?
22 A. Yes.
23 Q. How much is your draw?

4 (Pages 13 to 16)

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1 A. It is fifteen hundred dollars.
2 Q. Every two weeks?
3 A. Yes.
4 Q. Okay. And then you get paid a
5 commission which actually can vary year to
6 year, right?
7 A. Well, all of our pay is
8 commission.
9 Q. Okay.
10 A. It just varies year to year
11 whether your commission is over your draw
12 or under your draw.
13 Q. Okay. I'm doing a poor job of
14 explaining this. But your compensation is
15 based on the sales volume for your route;
16 is that fair?
17 A. Your sales collected, yes,
18 sir.
19 Q. Collected sales for the year.
20 A. Yes, sir.
21 Q. Okay. And the percentage of
22 your sales that are collected, you receive
23 as a commission, right, a percentage of

Page 18

1 that amount?
2 A. It can be, yes.
3 Q. Okay.
4 A. You have an option to defer.
5 If you make over your -- if your
6 commission winds up being over what your
7 draw is, you have the choice of getting a
8 one-time settlement check or you can defer
9 it to the rest of your draw checks.
10 Q. Okay. So do you get a draw
11 for the entire year?
12 A. Yes.
13 Q. They don't lay you off and let
14 you draw unemployment any part of the
15 year?
16 A. They do lay us off of work,
17 yes.
18 Q. Okay. Like in August, do you
19 get a draw check or an unemployment check?
20 A. I get a draw check.
21 Q. Until when?
22 A. I get it year-round,
23 twenty-six weeks a year.

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1 Q. Twenty-six biweekly checks?
2 A. Yes, sir, yes, sir.
3 Q. Okay. So they never -- do
4 they lay you off?
5 A. Yes.
6 Q. So you get that on top of your
7 draw check?
8 A. Get what on top of my draw
9 check?
10 Q. Your unemployment check.
11 A. Yes.
12 Q. Okay. Okay. I'm with you
13 now. So when you're not working, when the
14 season is over, in addition to your draw
15 check, you can get unemployment?
16 A. Yes.
17 Q. Okay. Now, and when the --
18 when does your unemployment start? Does
19 it normally start in August or July?
20 A. No. About a month after I
21 have my date of release.
22 Q. Okay. So they actually say
23 that you're released on a certain day?

Page 20

1 They report that to unemployment?
2 A. Yes, sir.
3 Q. And then after your time runs,
4 you can draw unemployment after that date?
5 A. Yes.
6 Q. Okay. I'm with you now. Now,
7 when you worked the other route in
8 Illinois, before you got to eighteen oh
9 three, when you worked eighteen oh five,
10 did you have a year-round draw?
11 A. Yes.
12 Q. Was it also fifteen hundred
13 dollars?
14 A. First two years it was a
15 thousand dollars. Then the third year I
16 moved it to fifteen hundred.
17 Q. Okay. So when you worked in
18 Illinois, your draw check was a thousand
19 dollars biweekly or five hundred dollars a
20 week, correct?
21 A. Yes.
22 Q. When you changed in 2006 to
23 eighteen oh three, you increased your draw

5 (Pages 17 to 20)

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1 to fifteen hundred dollars biweekly?
2 A. No matter if I would have
3 changed routes, I would have increased my
4 draw.
5 Q. Okay. But that's how it
6 occurred, correct?
7 A. Yes.
8 Q. Okay. And then that's
9 currently what you're receiving, correct?
10 A. Yes.
11 Q. Now, can you tell me how many
12 stores you had on your route in 2006 on
13 eighteen oh three?
14 A. Roughly thirty-five.
15 Q. Thirty-five. Do you know if
16 they made any changes from -- on that
17 route from the previous year?
18 A. Yes.
19 Q. Did they add any stores?
20 A. Well, they added some and they
21 took some away.
22 Q. Okay. What stores did they
23 add, if you know?

Page 22

1 A. They added a Home Depot.
2 Q. Where is that?
3 A. In Memphis, in Cordova,
4 Tennessee.
5 Q. Okay. What else did they add?
6 A. Wal-Mart.
7 Q. Where is that one?
8 A. In Memphis, Germantown
9 Parkway.
10 Q. Okay. Anything else they
11 added?
12 A. Nope.
13 Q. Do you know what they took
14 away?
15 A. There was a -- there was I
16 believe it was three or four stores in
17 Selmer, Tennessee.
18 Q. Selmer?
19 A. Selmer.
20 Q. And do you know what kind of
21 stores they were? Were they independents
22 or chains?
23 A. Chains and independents.

Page 23

1 Q. Okay. Can you name any of
2 them?
3 A. Wal-Mart, Tennessee Farmers
4 Co-op. And I don't know the name -- I
5 think it was some other stores,
6 independent stores that I'm not familiar
7 with the name.
8 Q. Where is Selmer in reference
9 to Germantown, I mean how far is that?
10 A. Maybe -- I really don't know,
11 forty-five minutes, an hour.
12 Q. Is it like about forty miles
13 or so or -- I don't know anything about
14 Tennessee.
15 A. I'm not sure how, I've never
16 driven from Germantown Parkway to Selmer
17 or Germantown to Selmer, so I really don't
18 know.
19 Q. Well, did this change have the
20 effect of making the route be shorter
21 geographically?
22 A. Yes.
23 Q. Okay. And did it also have

Page 24

1 the effect of being higher volume?
2 A. No.
3 Q. No. Roughly offset?
4 A. Yes.
5 Q. That's your understanding?
6 A. Uh-huh.
7 Q. Is that yes?
8 A. Yes.
9 Q. Okay. Now, were there any
10 changes in 2007?
11 A. No.
12 Q. All right.
13 A. Actually there was. I did
14 lose a couple stores in 2007.
15 Q. What did you lose in 2007?
16 A. I lost two stores in
17 Henderson, Tennessee and one in Middleton,
18 Tennessee, so it was actually three
19 stores.
20 Q. Okay. Did somebody else get
21 them?
22 A. Yes.
23 Q. Who got them, what route, do

6 (Pages 21 to 24)

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1 you know?
2 A. It was what we called a
3 Mississippi route. He runs a little bit
4 of Tennessee and a little bit of
5 Mississippi.
6 Q. He just inches into Tennessee
7 there and catches something?
8 A. Right. That territory was
9 added to Bells, Tennessee. Mississippi
10 territory was added to Bells, Tennessee in
11 2006.
12 Q. Okay.
13 A. And that's why the routes were
14 redone the way they were.
15 Q. Now, what about this year,
16 2008, have you added any stores?
17 A. Yes, we've changed them.
18 We've taken some away and added some more.
19 Q. What did you add?
20 A. Another Home Depot in Memphis
21 area and another Wal-Mart.
22 Q. Now, when y'all add a store,
23 is that because Home Depot has opened a

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1 new location, or is that because you've
2 just rearranged your route?
3 A. A lot of times as far as I
4 know, it's because I guess the territory.
5 I mean, it will be easier to run one way
6 than the other. The territory I'd lose
7 most of the time is on somebody's else's
8 way to their stores or vice versa. Or the
9 ones I gain are really close to me.
10 Q. It seems like they're making
11 your route more efficient, is that -- when
12 they add stores, it's to make your route
13 more efficient; is that correct?
14 A. Yes.
15 Q. And when you lose stores, it's
16 because you're not losing a customer,
17 they're reassigning them to another route?
18 A. Yes.
19 Q. Is that a fair statement?
20 A. Yes.
21 Q. Now, are you supposed to try
22 to develop business, that is, call on
23 stores that you don't currently service?

Page 27

1 A. Yes.
2 Q. Have you since you've been
3 assigned to this route opened any stores?
4 A. Yes, sir.
5 Q. You know what I'm talking
6 about --
7 A. Yes.
8 Q. -- when I say that?
9 A. Yes, I have.
10 Q. What stores have you opened,
11 that is, obtained their business?
12 A. I've opened a store by the
13 name of Naturescapes in Whiteville,
14 Tennessee.
15 Q. Okay. Is that an independent?
16 A. Yes.
17 Q. Is that a nursery or what do
18 they --
19 A. Yeah, I would basically call
20 it a nursery, yes.
21 Q. Okay. Anything else?
22 A. No.
23 Q. Okay. Now --

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1 A. Well, and I have reopened one
2 store in Germantown, Germantown Hardware,
3 which was worked in past years which I
4 guess had not been worked three or four
5 years prior to me being on that route
6 again.
7 Q. Okay. Now, you were working
8 for Adam and -- in 2000 -- you worked in
9 2005 in Illinois, correct?
10 A. Yes.
11 Q. When did he approach you about
12 changing routes, when in time did he
13 approach you of that?
14 A. I was offered a Tennessee
15 route in December of 2005.
16 Q. Did he have any conversation
17 with you when he offered you that route?
18 A. He just said that he had an
19 opening and was just -- was curious if I
20 was interested.
21 Q. Okay. Did he tell you
22 anything else about who had the route or
23 why they weren't coming back?

7 (Pages 25 to 28)

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1 A. No.
2 Q. Did you know? I mean you
3 worked with Terry?
4 A. Yes. I knew Terry had just
5 worked that route.
6 Q. Okay. What was your
7 understanding about why Terry wasn't
8 coming back?
9 A. I had no clue.
10 Q. That was not something he had
11 ever discussed with you?
12 A. No, sir.
13 Q. Okay. And a lot of places
14 have an annual evaluation, a job
15 evaluation. You know what I'm talking
16 about when I say a job evaluation?
17 A. Yes, sir.
18 Q. Okay. Have you ever seen a
19 job evaluation for the job you're doing?
20 A. I think we're evaluated every
21 year.
22 Q. Okay. Well, is it in writing?
23 A. No, sir.

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1 Q. How do you know what kind of
2 job you're doing? I mean, I know you can
3 read a sales report, but, I mean --
4 A. Pretty much that, to me that
5 is the evaluation.
6 Q. Well, do you sit down with
7 Adam or anybody at Bonnie Plant?
8 A. Me and Adam have sat down
9 almost every year at the end of the season
10 and talked.
11 Q. Okay. What did he tell you
12 about what kind of job you're doing and
13 what strengths and weaknesses you have or
14 whatever?
15 A. Yes.
16 Q. What does he tell you? I
17 don't know.
18 A. Well, I mean, just that. Just
19 talks about what was done right. I talk
20 about things that -- problems I had,
21 things we can do next year to increase
22 sales in certain areas, you know, any
23 problems with any stores, any help that I

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1 can get from him maybe talking to, you
2 know, regional managers and stuff like
3 that of different companies and just, you
4 know --
5 Q. Like if a certain item was
6 selling well but y'all couldn't keep it --
7 grow it fast enough or whatever, that is,
8 stocking inventory, discuss things like
9 that?
10 A. Yes.
11 Q. Okay. And who is your helper?
12 Do you have a helper?
13 A. Yes.
14 Q. Who is that?
15 A. His name is Conrado Antunez
16 C-o-n-r-a-d-o A-n-t-u-n-e-z.
17 Q. I apologize, but is he Mexican
18 or is he a foreigner?
19 A. He is Mexican.
20 Q. Okay. And has he been your
21 helper for how long?
22 A. Two years.
23 Q. So since 2006, 2007?

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1 A. No. He started with me last
2 year. This will be his second year.
3 Q. Okay. Who was your helper in
4 2006?
5 A. I had -- started with a man
6 named Michael Rhodes. He worked with me
7 for a month, and it moved to Keith Hunter
8 and also --
9 Q. He what --
10 A. Keith Hunter.
11 Q. You changed helpers. Why
12 wasn't Michael still working with you?
13 A. He failed to come to work a
14 few days when I needed him, and I had to
15 use somebody else.
16 Q. Okay. Did you have any
17 conversation with him or --
18 A. Very little.
19 Q. Where does he live, do you
20 know?
21 A. He lives in Brownsville,
22 Tennessee. He did then. I don't know if
23 he still does or not.

8 (Pages 29 to 32)

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1 Q. Did he ever come back to work
2 for Bonnie Plant that you know of?
3 A. He worked that same season for
4 other salesmen, and then worked last year
5 for a salesman.
6 Q. Is he still working with them,
7 or do you know who he worked for?
8 A. Not in Bells, Tennessee, no.
9 Q. Do you know who he worked for
10 other than you in Bonnie Plant?
11 A. I know he worked -- I know
12 years before he's worked for Terry Watson.
13 Q. But after he left you, do you
14 know anybody he worked for?
15 A. Stanley Johnson.
16 Q. Is he in Bells?
17 A. Yes.
18 Q. Okay. Anybody else?
19 A. Not that I know of.
20 Q. So who finished that year with
21 you, Keith Hunter?
22 A. Keith Hunter.
23 Q. Is he still working for Bonnie

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1 Plant?
2 A. Yes, he is.
3 Q. Who's he working for?
4 A. He works -- he kind of works
5 for all of us. He works at the farm and
6 helps us load trucks.
7 Q. Okay. He's just kind of
8 everybody's helper?
9 A. Yes.
10 Q. Where does he live, what city?
11 A. Bells, Tennessee.
12 Q. Okay. Now, may -- your first
13 name is Leslie?
14 A. Yes.
15 Q. May I call you Les? Is that
16 what you go by is Les?
17 A. Les, yes.
18 Q. Okay. Les, I'm going to show
19 you what I've marked as Exhibit 3 to Adam
20 Alley's deposition, and this is your
21 commission statement for the spring of
22 2006. And there is a protective order, by
23 the way, so I'm not going to be showing

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1 this to everybody.
2 A. Okay.
3 Q. But is that your commission
4 statement?
5 A. Yes.
6 Q. Do you know what the collected
7 sales were for your spring season in 2003?
8 What were they?
9 A. I cannot recall.
10 Q. Doesn't it list it there?
11 A. For 2003?
12 Q. I'm sorry, 2006. I apologize.
13 A. That's okay. Yes, collected
14 sales, I see it. Do you want me to say
15 it?
16 Q. Yes.
17 A. Three thousand seven -- three
18 hundred seventy-eight thousand.
19 Q. Is what you collected?
20 A. Yes.
21 Q. Okay. Now, do you know what
22 you did in -- for the spring of 2007, what
23 your collected sales were?

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1 A. Roughly it was four hundred
2 thousand.
3 Q. Approximately? Is it over
4 four?
5 A. Yes, it was over four.
6 Q. Okay. And do y'all have a --
7 your commission varies by how much you
8 sell, not just -- there is a flat rate
9 commission for all sales, correct?
10 A. For a certain percent, yes.
11 Q. And then it goes up depending
12 on how much you sell? That is, there are
13 increases if you sell above the goal,
14 correct?
15 A. There are incentives. If you
16 have an increase on your route, yes, there
17 are usually incentives to get more money,
18 yes.
19 Q. There are sales incentives
20 where you can make more money if you can
21 exceed the sales goal or the sales of the
22 previous year, correct?
23 A. Yes.

9 (Pages 33 to 36)

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1 Q. And there are incentives if
2 you exceed the company's stated sales
3 goal, right? I think it was three
4 seventy-five, three hundred seventy-five
5 thousand was one goal.
6 A. That was what -- you get paid
7 a certain amount up to three seventy-five
8 and then you can get another amount
9 over -- anything over three seventy-five.
10 That doesn't mean that if you make four
11 hundred thousand you are going to get the
12 increase. It's just on that twenty-five
13 thousand you would get that extra
14 percentage on that twenty-five thousand,
15 not the whole amount.
16 Q. Okay. Then as a commission
17 salesman, you have to pay certain expenses
18 out of your commissions, correct?
19 A. Yes, yes.
20 Q. And tell us what those --
21 kinds of things those are. For your
22 helper?
23 A. We have to pay labor for our

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1 helper. We have to pay for racks and
2 signs. Any motel rooms we stay in while
3 we're on the road we have to pay for
4 those. Any tools or lumber that we use on
5 our routes to make racks or signs or
6 anything, we have to pay for all that.
7 Q. And they have fines, Bonnie
8 Plant has fines or in previous years they
9 have had fines for skipping stores. Do
10 you know what I'm talking about?
11 A. Yes, sir.
12 Q. Tell me how that works.
13 A. We have stores, what we call
14 chain stores, which is Home Depot, Lowe's,
15 Wal-Marts. We're required to work those
16 stores every four weeks during a six-week
17 period. And if we did not work them every
18 four days within a six-week period, then
19 we would be fined.
20 Q. So you have to go to the chain
21 stores twice a week, is that fair?
22 A. Yes.
23 Q. Approximately?

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1 A. Approximately, yes.
2 Q. And if you failed to do that,
3 they can fine you? They can take money
4 out of your commissions?
5 A. Yes.
6 Q. Now, how do they know what
7 stores you've worked? How do they know
8 you skipped a store?
9 A. We have a log that we keep
10 when we are at stores, tickets, delivery
11 reports that we fill out every week and
12 turn in.
13 Q. Okay. Now, I don't know how
14 much you know about Terry. Have you ever
15 worked with Terry?
16 A. I mean, I worked in Bells,
17 Tennessee with him, so I mean --
18 Q. The same physical location but
19 y'all never rode in the truck together?
20 A. No.
21 Q. And you never went with him on
22 his route, correct?
23 A. No.

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1 Q. And he never went with you on
2 your route?
3 A. No.
4 Q. So you don't know anything
5 about his work ethic or habits or anything
6 like that?
7 A. No.
8 Q. Or job performance or
9 anything?
10 A. No.
11 Q. All right. And Adam never
12 told -- shared anything with you about
13 Terry, did he?
14 A. No.
15 Q. Okay. And you've worked for
16 four -- this is your fifth year?
17 A. Yes.
18 Q. Every move that you've made --
19 you've only worked two different routes,
20 correct?
21 A. Yes.
22 Q. The second route that you
23 worked, you were asked if you wanted to

10 (Pages 37 to 40)

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1 work?
2 A. Yes.
3 Q. Okay. It was your decision to
4 take that route?
5 A. Yes.
6 Q. Okay. They never reassigned
7 you to work another route involuntarily?
8 A. No.
9 Q. Okay. And I know this sounds
10 crazy, but I need to ask you anyway, you
11 certainly at age thirty-one --
12 A. Yes.
13 Q. -- you've never made a
14 complaint of age discrimination because
15 you're not even old enough to make one,
16 right? You're not over age forty?
17 A. No.
18 Q. Now, every year that you've
19 worked as a salesman, have you -- and when
20 you are in sales, it's important -- one of
21 the ways they measure, evaluate your
22 performance is based on how the route did
23 the previous year as compared to this

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1 there are several people over that goal.
2 I mean, I can't even say it was a goal. I
3 mean, it was just that line.
4 Q. Well, you know what I'm
5 talking about when I say -- we can call it
6 anything you want, a commission break or
7 whatever.
8 A. Okay.
9 Q. Every year that you've worked
10 there, have you always made -- your sales
11 always been over that stated amount so
12 that you got additional commissions?
13 A. Additional over my draw?
14 Q. No. Over your -- the higher
15 percentage for the incentive, have you
16 always received an incentive?
17 A. Have I always made more money
18 is what you are asking? I don't
19 understand what you are asking.
20 Q. Okay. Well, I will try to
21 make it clear. You know how -- what we
22 described earlier over three hundred
23 seventy-five thousand dollars in sales,

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1 year, correct?
2 A. Yes.
3 Q. In every year, have you
4 increased the route, the sales on the
5 route?
6 A. Every year I've been with
7 Bonnie, I've increased sales on every
8 route I've worked on.
9 Q. Okay. And then in terms of
10 this stated sales goal which changes from
11 year to year, have you always met that on
12 your route?
13 A. I'm sorry, ask that again.
14 Q. You know like I told you
15 before, the three hundred seventy-five
16 thousand was a goal for one year?
17 A. Uh-huh.
18 Q. And the commission broke, you
19 got a higher --
20 A. I wouldn't necessarily say it
21 was a goal. It was just a number they
22 came up with. I don't know why. There
23 are several people under that goal and

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1 you got a higher commission over any
2 amount over that?
3 A. Okay.
4 Q. We call that a sales
5 incentive, correct?
6 A. Uh-huh.
7 Q. Correct?
8 A. Uh-huh.
9 Q. Is that yes?
10 A. Yes.
11 Q. And they tell you before the
12 season starts what figure you need to
13 reach in order to obtain an incentive
14 above that?
15 A. Yes.
16 Q. Have you always since you've
17 been a salesman sold enough so that you
18 received the additional incentive?
19 A. I've reached incentives every
20 year. We usually have three or four
21 incentives that you need to reach every
22 year to get an extra percent or more
23 money. So not every year, I have not

11 (Pages 41 to 44)

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1 reached all of them, no.
2 Q. Okay. You've answered my
3 question.
4 A. Okay.
5 Q. Sorry it's hard to ask, I
6 guess.
7 A. I understand.
8 MR. GERHARDT: Jerry, can I
9 get this straight for a second?
10 MR. ROBERSON: Sure.
11 MR. GERHARDT: So I
12 understand, there is no one -- is there
13 one incentive number?
14 A. No.
15 MR. GERHARDT: Or are there
16 multiple?
17 A. There is multiple. Every year
18 there is multiple.
19 Q. And every year do they put in
20 a document in writing what the incentives
21 are?
22 A. Yes, a pay plan, yes.
23 Q. A pay plan? Thank you.

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1 A. Uh-huh.
2 Q. So that would be available
3 from Bonnie Plant for every year?
4 A. Yes.
5 Q. Okay. And that's what y'all
6 call it, the pay plan?
7 A. Pay plan, yes, sir.
8 MR. ROBERSON: All right.
9 Thank you. I don't have anything else for
10 Mr. Branham. Thank you, sir.
11 Do you have any questions?
12 MR. GERHARDT: I don't.
13 MR. ROBERSON: This -- we'll
14 stop the deposition at looks like it's
15 1:51. Let's go off the record.
16
17 (Off-the-record discussion.)
18
19 FURTHER THE DEPONENT SAITH NOT
20
21
22
23

C E R T I F I C A T E

STATE OF ALABAMA)
JEFFERSON COUNTY)

I hereby certify that the
above and foregoing deposition was taken
down by me in stenotypy, and the questions
and answers thereto were reduced to
typewriting under my supervision, and that
the foregoing represents a true and
correct transcript of the deposition given
by said witness upon said hearing.

I further certify that I am
neither of counsel nor of kin to the
parties to the action, nor am I in anywise
interested in the result of said cause.

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**DEFENDANT ALABAMA FARMERS COOPERATIVE,
INC. D/B/A BONNIE PLANT FARMS**

EX. 4

TO EVIDENTIARY SUBMISSION

In The Matter Of:

ARTHUR T. WATSON

v.

ALABAMA FARMERS COOPERATIVE, INC., ET AL.

NO. 2:07-CV-520-WHA

TATE GATLIN

April 22, 2008



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ARTHUR T. WATSON
ALABAMA FARMERS COOPERATIVE, INC., ET AL.

TATE GATLIN
April 22, 2008

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IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CIVIL ACTION NO. 2:07-CV-520-WHA

ARTHUR T. WATSON,
Plaintiff,

vs.

ALABAMA FARMERS COOPERATIVE, INC.,
D/B/A BONNIE PLANT FARMS,
Defendants.

VIDEO DEPOSITION
OF
TATE GATLIN
April 22, 2008

REPORTED BY: Eleanor S. Pickett
Certified Shorthand Reporter
and Notary Public

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STIPULATION

IT IS STIPULATED AND AGREED,
by and between the parties, through their
respective counsel, that the video
deposition of TATE GATLIN may be taken
before Eleanor S. Pickett, Commissioner,
Certified Shorthand Reporter and Notary
Public;

That the signature to and
reading of the deposition by the witness
is waived, the deposition to have the same
force and effect as if full compliance had
been had with all laws and rules of Court
relating to the taking of depositions;

That it shall not be necessary
for any objections to be made by counsel
to any questions, except as to form or
leading questions, and that counsel for
the parties may make objections and assign
grounds at the time of trial, or at the
time said deposition is offered in
evidence, or prior thereto.

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A P P E A R A N C E S

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I N D E X

PAGE:
EXAMINATION BY MR. ROBERSON 6

E X H I B I T S

Plaintiff's Exhibits 1 - 3 4

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I, Eleanor S. Pickett, a
Certified Shorthand Reporter of
Birmingham, Alabama, and a Notary Public
for the State of Alabama at Large, acting
as Commissioner, certify that on this
date, as provided by the Federal Rules of
Civil Procedure of the United States
District Court, and the foregoing
stipulation of counsel, there came before
me at the law offices of Burr & Forman
LLP, 3400 Wachovia Tower, Birmingham,
Alabama, on April 22, 2007, commencing at
11:35 a.m., TATE GATLIN, witness in the
above cause, for oral examination,
whereupon the following proceedings were
had:

(Whereupon, Plaintiff's
Exhibits 1 - 3 were marked for
identification.)

MR. ROBERSON: All right.

This is the videotape deposition of Tate
Gatlin. It's being taken on April 22nd,

1 (Pages 1 to 4)

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1 2008 at the law offices of Burr & Forman
2 in Birmingham, Alabama. This case is
3 pending in the United States District
4 Court for the Middle District of Alabama,
5 Northern Division. It's styled Arthur T.
6 Watson, Terry Watson, versus Alabama
7 Farmers Cooperative, Inc., doing business
8 as Bonnie Plant Farms, defendant. It's CV
9 07-520. I'm Jerry Roberson. I represent
10 the plaintiff, Terry Watson. And I'm also
11 running the video camera. I would ask all
12 counsel of record to state their name and
13 the party that they represent.

14 MR. GERHARDT: I'm Graham
15 Gerhardt with Burr & Forman here on behalf
16 of the defendant. Okay.

17
18 TATE GATLIN,
19 having been first duly sworn, was examined
20 and testified as follows:

21
22 THE REPORTER: Usual
23 stipulations?

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1 A. Okay.

2 Q. So if you answer it, I'm going
3 to assume you understood it. Fair enough?

4 A. Fair enough.

5 Q. And I apologize, I have a cold
6 today. So if you can't understand me or
7 if I'm not communicating with you, if you
8 will let me know, I'll try to talk louder,
9 all right?

10 A. Okay.

11 Q. Now, would you tell me where
12 you reside, what your -- the street
13 address is of your home?

14 A. It's [REDACTED],

15 [REDACTED]

16 Q. [REDACTED]

17 A. That's correct.

18 Q. Can you tell me where that's
19 located?

20 A. It's about twenty miles
21 southeast of Troy, Alabama.

22 Q. Okay. So is your office where
23 you report to work, is that in Union

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1 MR. GERHARDT: Yes, ma'am.
2 MR. ROBERSON: Yes.

3
4 EXAMINATION BY MR. ROBERSON:

5 Q. Mr. Gatlin, my name is Jerry
6 Roberson. I represent Terry Watson in
7 this case. Have you ever given a
8 deposition before?

9 A. Yes, sir.

10 Q. How many times?

11 A. Numerous. I don't know
12 particular numbers.

13 Q. Okay. So you know the rules
14 today in that you have to answer out loud
15 audibly to my questions.

16 A. Yes, sir.

17 Q. Don't nod your head or say
18 uh-huh or huh-uh like we would do in
19 normal conversation. Fair enough?

20 A. Fair enough.

21 Q. And if I ask you a question
22 that you don't understand, please let me
23 know you don't understand, okay?

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1 Springs, Alabama?

2 A. Yes, sir, that is correct.

3 Q. How far is your home from
4 Union Springs?

5 A. It's fifty-four miles.

6 Q. Okay. Do you commute each
7 day?

8 A. Yes, sir.

9 Q. Okay. And are you married?

10 A. No, sir.

11 Q. How old are you, Tate?

12 A. I'm thirty-six.

13 Q. How long have you worked for
14 Bonnie Plant Farms?

15 A. For -- since 2003.

16 Q. Okay. So --

17 A. Going on five years.

18 Q. Coming up on five years?

19 A. Yes, sir.

20 Q. Would you tell me what your
21 job title is or job classification?

22 A. I'm the safety director.

23 Q. For Bonnie Plant, the

2 (Pages 5 to 8)

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1 entire --
2 A. For Bonnie Plant Farm.
3 Q. And just for those of us who
4 are not in the plant business, what does
5 that mean, you're the safety director?
6 All the drivers report to you?
7 A. I am responsible for dealing
8 with compliance with OSHA, EPA, DOT and
9 also handle insurance claims and stuff of
10 that nature for our company, reduce risk.
11 Q. Okay. Well, Terry Watson is a
12 salesperson, a plant salesman. You
13 understand that?
14 A. Yes, sir.
15 Q. Okay. And all the people --
16 how many -- do you know about how many
17 plant salesmen they have? Several
18 hundred?
19 A. Several hundred, yes.
20 Q. Okay. And all of them, I
21 understand, drive a truck to deliver the
22 plants; is that correct?
23 A. Yes, sir.

1 over twenty-six thousand one pound or
2 above or greater, you would have to have a
3 CDL, yes, sir.
4 Q. Okay. And so in order -- in
5 order to operate these vehicles for Bonnie
6 Plant, do the people have to have, the
7 truck drivers or the plant salesmen, do
8 they have to have some medical
9 certification?
10 A. Yes, sir, they do.
11 Q. What is that called? What is
12 that known as?
13 A. DOT physical.
14 Q. Okay. They have to have a DOT
15 physical every two years?
16 A. Depending on the physician's
17 request. Other conditions require fewer
18 or less years.
19 Q. Okay. All right. And Terry
20 Watson is a truck driver, so he has to
21 have a DOT physical, correct?
22 A. That is correct.
23 Q. Now, the helpers, the people

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1 Q. So they have to have a motor
2 vehicle license, correct?
3 A. Yes, sir.
4 Q. And part of your job as the
5 safety director is to make sure that -- I
6 may have just unplugged my video camera.
7 Part of your job is to make
8 sure that they all are qualified to
9 operate this truck, correct?
10 A. That's correct.
11 Q. They don't have to have a CDL.
12 It's only a six-wheel truck, right?
13 A. That's correct, but it's
14 judged by the GVW, gross vehicle weight,
15 yes.
16 Q. Okay. Well, how much do these
17 trucks weigh?
18 A. They're GVW'd at twenty-five
19 thousand nine hundred ninety-five pounds.
20 Q. Okay. Now, if you were an
21 over-the-road truck driver, then you would
22 have to have a CDL, correct?
23 A. If you're operating a vehicle

1 that assist the plant salesmen, if they
2 want to operate the vehicle or if the
3 salesman wants them to be able to operate
4 the vehicle, do they have to comply with
5 these same rules?
6 A. Yes, sir, they do.
7 Q. So they have to be certified
8 and have a motor vehicle license, correct?
9 A. That's correct.
10 Q. All right. And then all that
11 has to be reported on your insurance,
12 correct? In order to have insurance
13 coverage when they're operating it, they
14 have to be a listed driver, correct?
15 A. The insurance -- vehicles are
16 insured, yes, which covers our people.
17 Our people are insured.
18 Q. Okay. But don't you have to
19 submit some kind of list to them?
20 A. No, sir, we do not submit a
21 particular list of all our drivers with
22 them.
23 Q. Oh, you don't?

3 (Pages 9 to 12)

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1 A. No, sir.
2 Q. Do you just list your
3 vehicles?
4 A. Yes, sir.
5 Q. You have a list of vehicles?
6 A. It's a fleet policy, that's
7 correct.
8 Q. Okay. And you identify the
9 vehicles by their VIN number, correct?
10 A. Yes, sir, that's correct.
11 Q. And if you add or remove
12 vehicles, you delete them or add them to
13 your list, correct?
14 A. That is correct, sir.
15 Q. But you're telling me, as I
16 understand -- who is your insurance
17 carrier for your vehicles?
18 A. Nationwide Agri Business.
19 Q. You're telling me that you
20 don't have to report who your operators of
21 those vehicles are and they don't have to
22 have their license information and their
23 DOT certification?

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1 A. No, sir, we do not submit that
2 to them.
3 Q. Okay. Who is y'all's agent?
4 A. Arthur J. Gallagher.
5 Q. Is he in Union Springs?
6 A. Arthur J. Gallagher, no, sir.
7 They are out of Nashville, Tennessee.
8 Q. Okay. Now, Terry, do you know
9 how long Terry Watson has been employed as
10 a plant salesman for Bonnie Plant?
11 A. I have no idea.
12 Q. Do you know how old he is?
13 A. I don't have any idea, no,
14 sir.
15 Q. Well, let me show you what
16 I've marked as Plaintiff's Exhibit 1, and
17 this is the deposition notice I sent to
18 the attorney for Bonnie Plant, Mr.
19 Gerhardt. Have you seen that document
20 before today?
21 A. Have I seen it, yes, sir.
22 Q. Okay. And I asked at this
23 deposition that Bonnie Plant produce some

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1 documents regarding Terry Watson. You're
2 aware of that?
3 A. Uh-huh.
4 Q. Is that a yes?
5 A. Yes, sir, I'm sorry.
6 Q. That's all right. I'll try to
7 remind you. I'm not doing that to annoy
8 you, just to make the record clear.
9 A. That's fine.
10 Q. All right. Exhibit 1 is the
11 deposition notice. And y'all have in
12 response, Bonnie Plant has, in response to
13 that notice produced two documents which
14 I've marked as Exhibits 2 and 3; is that
15 correct?
16 A. Yes, sir, that is correct.
17 Q. Okay. Now, would you hand me
18 back Exhibit 1?
19 A. Surely.
20 Q. I asked for all documents
21 which relate to the decision not to
22 reassign Terry Watson to the Bells,
23 Tennessee route beginning in the spring

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1 season of 2006. This request includes
2 correspondence, medical records, or
3 correspondence from any physician about
4 the state of Mr. Watson's health or any
5 inquiry into his health by this defendant.
6 So as the medical -- as the safety
7 director, are you allowed to communicate
8 with physicians about the employees that
9 you supervise?
10 A. Sure.
11 Q. You have to, don't you?
12 A. To some extent, yes.
13 Q. Yeah. If you get some -- if
14 somebody is having some type of procedure
15 done and they may have some restrictions
16 for a while, you have to know whether they
17 can drive a truck, correct?
18 A. Sure, if we're notified of it.
19 Q. You have to know about their
20 state of health and any restrictions that
21 they have, correct?
22 A. Yes.
23 Q. Okay. All right. And you

4 (Pages 13 to 16)

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1 have produced or Bonnie Plant has produced
2 two documents. Now, would you tell me
3 what Exhibit 2 is? It's a one-page
4 document, and it says from Wellness Group,
5 Inc., to Tate something on-line. Watson's
6 screening results today. It's dated
7 January 4th, 2006. Can you tell me what
8 that is?

9 A. That is an e-mail from Mark
10 Mashburn which is a physical therapist.

11 Q. Where is he?

12 A. Where is he?

13 Q. Where is he located?

14 A. Out of Dothan, Alabama.

15 Q. Okay. And did he examine
16 Terry Watson?

17 A. He performed a fitness for
18 duty testing on all of our employees.

19 Q. Okay. And is that done in
20 Dothan, or where is that done?

21 A. That is actually done at our
22 sales meeting.

23 Q. Your annual sales meeting?

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1 Q. Okay. Well, the e-mail is
2 dated January 4th, '06.

3 A. Yes, sir.

4 Q. I don't know when the
5 examination took place.

6 A. Yes, sir, it took place at our
7 sales meeting.

8 Q. Okay. So the meeting would
9 have been back earlier is what you're
10 saying?

11 A. Yes, sir, end of November,
12 first of December.

13 Q. Okay. And Terry had had a
14 total knee replacement in July of '05,
15 correct?

16 A. According to that, yes, sir.

17 Q. All right. And this says he
18 is fine to drive, get in and out of truck,
19 maybe help carry items, plants, at waist
20 to knuckle level and to shoulder level but
21 not overhead. Okay. Do you see that in
22 that document about the middle of the
23 page?

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1 A. Yes, sir.

2 Q. Okay. Do you know where that
3 was in January of '06?

4 A. I believe it was probably in
5 Auburn, Alabama, if I'm -- if I recall
6 correctly.

7 Q. Okay. And what was the
8 results of his testing in January of '06?

9 A. It says his screening was
10 limited to his report and the restrictions
11 do not -- do I need to read this whole
12 thing, sir?

13 Q. No, hand it to me.

14 A. (Witness complies.)

15 Q. All right. This examination
16 was conducted in January of '06, correct?
17 That's when your annual meeting was?

18 A. If it was in January.
19 Sometimes it's in usually November or
20 December.

21 Q. Okay.

22 A. And then I get the report back
23 in January.

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1 A. Yes, I do.

2 Q. Okay. Then we have
3 Plaintiff's Exhibit 3 which is an
4 attending physician statement from Mr.
5 Watson's neck doctor, Dr. Burkus, at the
6 Hughston Clinic in Columbus, Georgia,
7 which indicates that he has no
8 restrictions as of January of '06,
9 correct?

10 A. Yes, sir.

11 Q. Okay. So based on those two
12 documents, did you believe that Terry
13 Watson was fit for duty as a plant
14 salesman truck driver for Bonnie Plant
15 Farms?

16 MR. GERHARDT: Object to the
17 form.

18 Q. You can answer.

19 A. With some additional help,
20 yes.

21 Q. Okay. As long as he had
22 somebody to help him, assist him, with
23 loading and unloading the plants, correct?

5 (Pages 17 to 20)

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1 A. I felt, yes.
2 Q. Okay. And did you advise Joe
3 Stewart of that?
4 A. Of?
5 Q. Terry's fitness for duty.
6 A. Yes.
7 Q. Is there a writing where you
8 said he was fit for duty?
9 A. No.
10 Q. Okay. Do you -- where is Mr.
11 Stewart's office in relation to yours at
12 the Union Springs headquarters?
13 A. It's in a separate building
14 across the way.
15 Q. Okay. So how did you contact
16 him? Was it by phone, or did you go stop
17 by and see him?
18 A. Don't recall particulars, but
19 probably talked to Joe at some point in
20 time when he was in the office.
21 Q. Do you maintain a file on each
22 employee, truck driver employee?
23 A. We have a driver files on

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1 those individuals, yes, sir, we have to.
2 Q. Okay. Is that on OSHA
3 requirement?
4 A. No, sir, it's DOT.
5 Q. DOT?
6 A. Yes, sir.
7 Q. And what kind of information
8 do you keep in a DOT file for each
9 employee, their card, their physical card?
10 A. Medical card has to be kept
11 there, a copy of the driver's license we
12 keep, a copy of the person's application,
13 the previous three-years prior history of
14 employment history, drug screen results.
15 Q. Are these drivers subject to
16 random drug tests?
17 A. Yes, sir.
18 Q. Okay. Are they also
19 subject -- do you have to periodically run
20 an MVR on each of them?
21 A. Yes, sir.
22 Q. How often do you have to do
23 that?

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1 A. Annually.
2 Q. And does that become part of
3 the file?
4 A. Yes, sir.
5 Q. And just for our jury, what is
6 an MVR?
7 A. Motor vehicle record which is
8 a review of a person's driving history for
9 -- we look at the past three years is what
10 we look at.
11 Q. So if they have had a moving
12 violation, a ticket, it will be on the MVR
13 if they paid it, correct?
14 A. It should appear on the MVR.
15 Q. Okay. And do you have to
16 periodically review the MVRs with the
17 employees and let them know if they're
18 doing something wrong?
19 A. Yes, sir. We do if they're in
20 danger of not being able to drive due to
21 our policy, then we notify them of where
22 they're at.
23 Q. Okay. Now, would there be

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1 anything in Terry Watson's file that would
2 tell us when you spoke with Joe Stewart or
3 what you said with respect to Terry
4 Watson's clearance to drive and fitness
5 for duty in January of '06?
6 A. No, sir.
7 Q. So all that's just oral; is
8 that correct?
9 A. Yes, sir.
10 Q. Okay. Do you know when the
11 spring season began in Bells, Tennessee?
12 A. No, sir.
13 Q. And as I understand it, you
14 clear somebody to drive, but you don't
15 have anything to do with the decision of
16 where they're assigned to work; is that a
17 fair statement?
18 A. That's a fair statement, yes,
19 sir.
20 Q. Okay. In other words, you
21 clear them and they can work any route
22 that they're designated for, correct?
23 A. That is correct, sir.

6 (Pages 21 to 24)

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Q. Okay. And have you ever had any restrictions other than this period after Terry's surgeries in -- after the '05 season, have you ever had any restrictions on Terry Watson's ability to work as a plant salesman?

MR. GERHARDT: Object to the form.

Q. You can answer. Have you ever placed him on any kind of he can't work as a salesman for a period of time?

A. No, sir. I don't have anything to do with that, no.

Q. Okay. Well, you issue the medical clearance. So he's always been cleared to drive for y'all; is that correct?

MR. GERHARDT: Object to the form.

Q. Up until 2005 until he had his surgery, he's always been approved to operate a motor vehicle, correct?

A. For my period of time as being

it's only for the new hires?

A. That's correct. Now it's presently done for new hires. After we got the employees that were employed with us after we started the program, we had to get them in first at a point in time and then now it's done for all the new people.

Q. And Mr. Mashburn isn't a doctor a physician, he's a physical therapist, correct?

A. That is correct.

Q. All right. And so he -- have you ever sat in on this evaluation for any person? Do you know what it consists of?

A. I am aware of what it consists of.

Q. I mean, are they required to move objects, lift and bend, pull and stoop, those kind of things, the functions of what you do as a driver?

A. Yes, sir, basically.

Q. Okay. And that's --

A. The gist of the job

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safety director that I have knowledge of, sir.

Q. Okay. That's -- I apologize, yeah. Since 2003 since you've been the safety director, he's always been approved to drive, correct?

A. Yes, sir, that I'm aware of.

Q. He has appropriate medical clearances to drive and operate a motor vehicle?

A. Yes, sir, that I'm aware of.

Q. Is this examination that's done by -- and you told me his name, Mark, what is Mark's last name?

A. Mashburn.

Q. That's done for all employees every year?

A. We try and get new employees as they come in. We had to go back and do people that were currently employed at the time.

Q. Okay. All right. So this isn't done every year on an annual basis,

assignments, job duties, is performed in that short period of time.

Q. Okay. Now, did Terry ever have any additional examination by Mr. Mashburn after the one that's reported here in Exhibit 2?

A. Not that I'm aware of.

Q. Okay. All right. And other -- other than this one record from the Hughston Clinic that y'all have marked -- that I've marked as Exhibit 3, do you have any other additional information from his physicians about his restrictions?

A. No, sir.

Q. And did you seek any, that is, did you try to obtain any information from any of his physicians?

A. No, sir.

Q. Mr. Watson actually brought you Exhibit 3, isn't that correct?

A. Yes, sir.

MR. ROBERSON: Okay. All

7 (Pages 25 to 28)

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1 right. I hate to say it but I think I'm
2 through.
3 MR. GERHARDT: Good enough.
4 MR. ROBERSON: Have you got
5 any questions?
6 MR. GERHARDT: I don't.
7 MR. ROBERSON: Okay. That
8 will conclude the deposition of Tate
9 Gatlin at 11:55. We are off the record.

10
11 FURTHER THE DEPONENT SAITH NOT
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19
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22
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1 CERTIFICATE
2

3
4 STATE OF ALABAMA)
5 JEFFERSON COUNTY)
6

7 I hereby certify that the
8 above and foregoing deposition was taken
9 down by me in stenotypy, and the questions
10 and answers thereto were reduced to
11 typewriting under my supervision, and that
12 the foregoing represents a true and
13 correct transcript of the deposition given
14 by said witness upon said hearing.

15 I further certify that I am
16 neither of counsel nor of kin to the
17 parties to the action, nor am I in anywise
18 interested in the result of said cause.
19
20
21
22

23 COMMISSIONER - NOTARY PUBLIC
ACCR LICENSE NO. 278

8 (Pages 29 to 30)

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<p>A</p> <p>ability 25:5</p> <p>able 12:3 23:20</p> <p>ACCR 30:23</p> <p>acting 4:4</p> <p>action 1:5 30:17</p> <p>add 13:11,12</p> <p>additional 20:19 28:4,12</p> <p>address 7:13</p> <p>advise 21:2</p> <p>agent 14:3</p> <p>AGREED 2:3</p> <p>Agri 13:18</p> <p>Alabama 1:2,10 3:8,15 4:3,4,12 5:2,4,6 8:1 18:5 30:4</p> <p>allowed 16:7</p> <p>annoy 15:7</p> <p>annual 17:23 18:17 26:23</p> <p>Annually 23:1</p> <p>answer 6:14 7:2 20:18 25:9</p> <p>answers 30:10</p> <p>anywise 30:17</p> <p>apologize 7:5 26:3</p> <p>appear 23:14</p> <p>application 22:12</p> <p>appropriate 26:8</p> <p>approved 25:21 26:5</p> <p>April 1:19 4:12,23</p> <p>Arthur 1:7 5:5 14:4,6</p> <p>asked 14:22 15:20</p> <p>assign</p>	<p>2:20</p> <p>assigned 24:16</p> <p>assignments 28:1</p> <p>assist 12:1 20:22</p> <p>assume 7:3</p> <p>attending 20:4</p> <p>attorney 3:5,12 14:18</p> <p>Auburn 18:5</p> <p>audibly 6:15</p> <p>aware 15:2 26:7,11 27:15 28:7</p> <p>a.m 4:13</p> <p>B</p> <p>back 15:18 18:22 19:9 26:19</p> <p>based 20:11</p> <p>basically 27:21</p> <p>basis 26:23</p> <p>began 24:11</p> <p>beginning 15:23</p> <p>behalf 5:15</p> <p>believe 18:4 20:12</p> <p>Bells 15:22 24:11</p> <p>bend 27:18</p> <p>Birmingham 3:8,15 4:3,11 5:2</p> <p>Bonnie 1:11 5:8 8:14,23 9:2 11:5 14:10,18,23 15:12 17:1 20:14</p> <p>Box 3:7</p> <p>brought 28:20</p> <p>building 21:13</p> <p>Burkus 20:5</p> <p>Burr</p>	<p>3:13 4:10 5:1,15</p> <p>business 5:7 9:4 13:18</p> <p>C</p> <p>C 3:1 30:1,1</p> <p>called 11:11</p> <p>camera 5:11 10:6</p> <p>card 22:9,9,10</p> <p>carrier 13:17</p> <p>carry 19:19</p> <p>case 5:2 6:7</p> <p>cause 4:14 30:18</p> <p>CDL 10:11,22 11:3</p> <p>certification 11:9 13:23</p> <p>certified 1:22 2:8 4:2 12:7</p> <p>certify 4:5 30:7,15</p> <p>Civil 1:5 4:7</p> <p>claims 9:9</p> <p>classification 8:21</p> <p>clear 15:8 24:14,21</p> <p>clearance 24:4 25:15</p> <p>clearances 26:9</p> <p>cleared 25:16</p> <p>Clinic 20:6 28:10</p> <p>cold 7:5</p> <p>Columbus 20:6</p> <p>come 26:19</p> <p>Coming 8:18</p> <p>commencing 4:12</p> <p>Commissioner 2:7 4:5 30:22</p> <p>communicate 16:7</p> <p>communicating</p>	<p>7:7</p> <p>commute 8:6</p> <p>company 9:10</p> <p>compliance 2:13 9:8</p> <p>complies 18:14</p> <p>comply 12:4</p> <p>conclude 29:8</p> <p>conditions 11:17</p> <p>conducted 18:16</p> <p>consists 27:14,15</p> <p>contact 21:15</p> <p>conversation 6:19</p> <p>Cooperative 1:10 5:7</p> <p>copy 22:11,12</p> <p>correct 7:17 8:2 9:22 10:2,9,10 10:13,22 11:21,22 12:8,9 12:12,14 13:7,9,10,13,14 15:15,16 16:17,21 18:16 19:15 20:9,23 23:13 24:8,22,23 25:17,22 26:6 27:2,10,11 28:21 30:13</p> <p>correctly 18:6</p> <p>correspondence 16:2,3</p> <p>counsel 2:5,17,19 4:9 5:12 30:16</p> <p>County 30:5</p> <p>Court 1:1 2:14 4:8 5:4</p> <p>coverage 12:13</p> <p>covers 12:16</p> <p>currently 26:20</p> <p>CV 5:8</p> <p>D</p> <p>D 3:4,18</p> <p>danger 23:20</p>	<p>date 4:6</p> <p>dated 17:6 19:2</p> <p>day 8:7</p> <p>dealing 9:7</p> <p>December 18:20 19:12</p> <p>decision 15:21 24:15</p> <p>defendant 3:10 5:8,16 16:5</p> <p>Defendants 1:12</p> <p>delete 13:12</p> <p>deliver 9:21</p> <p>Depending 11:16</p> <p>DEPONENT 29:11</p> <p>deposition 1:16 2:6,11,12,22 4:22 6:8 14:17,23 15:11 29:8 30:8,13</p> <p>depositions 2:15</p> <p>designated 24:22</p> <p>director 8:22 9:5 10:5 16:7 26:1 26:5</p> <p>District 1:1,2 4:8 5:3,4</p> <p>Division 1:3 5:5</p> <p>doctor 20:5 27:9</p> <p>document 14:19 17:4 19:22</p> <p>documents 15:1,13,20 17:2 20:12</p> <p>doing 5:7 15:7 23:18</p> <p>DOT 9:8 11:13,14,21 13:23 22:4,5,8</p> <p>Dothan 17:14,20</p> <p>Dr 20:5</p> <p>drive 9:21 16:17 19:18 23:20 24:4,14 25:16 26:6,9</p> <p>driver 10:21 11:20 12:14 20:14 21:22,23 27:20</p> <p>drivers</p>
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**DEFENDANT ALABAMA FARMERS COOPERATIVE,
INC. D/B/A BONNIE PLANT FARMS**

EX. 5

TO EVIDENTIARY SUBMISSION

In The Matter Of:

ARTHUR T. WATSON

v.

ALABAMA FARMERS COOPERATIVE, INC., ET AL.

NO. 2:07-CV-520-WHA

JOE STUART

May 23, 2008



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ALABAMA FARMERS COOPERATIVE, INC., ET AL.

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IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CIVIL ACTION NO. 2:07-CV-520-WHA

ARTHUR T. WATSON,
Plaintiff,

vs.

ALABAMA FARMERS COOPERATIVE, INC.,
d/b/a BONNIE PLANT FARMS,
Defendants.

VIDEO DEPOSITION
OF

JOE STUART
May 23, 2008

REPORTED BY: Gail B. Pritchett
Certified Realtime Reporter,
Registered Professional
Reporter and Notary Public

A P P E A R A N C E S

FOR THE PLAINTIFF:

Mr. Jerry Roberson
Attorney at Law
3765 Kinross Drive
P. O. Box 380487
Birmingham, Alabama 35238

FOR THE DEFENDANT:

Mr. Graham W. Gerhardt
Attorney at Law
Burr & Forman LLP
3400 Wachovia Tower
Birmingham, Alabama 35203

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S T I P U L A T I O N

IT IS STIPULATED AND AGREED,
by and between the parties, through their
respective counsel, that the deposition of
JOE STUART may be taken before Gail B.
Pritchett, Commissioner, Certified
Realtime Reporter, Registered Professional
Reporter and Notary Public;

That the signature to and
reading of the deposition by the witness
is waived, the deposition to have the same
force and effect as if full compliance had
been had with all laws and rules of Court
relating to the taking of depositions;

That it shall not be necessary
for any objections to be made by counsel
to any questions, except as to form or
leading questions, and that counsel for
the parties may make objections and assign
grounds at the time of trial, or at the
time said deposition is offered in
evidence, or prior thereto.

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1 I, Gail B. Pritchett, a
2 Certified Realtime Reporter and Registered
3 Professional Reporter of Birmingham,
4 Alabama, and a Notary Public for the State
5 of Alabama at Large, acting as
6 Commissioner, certify that on this date,
7 as provided by the Federal Rules of Civil
8 Procedure of the United States District
9 Court, and the foregoing stipulation of
10 counsel, there came before me at the law
11 offices of Burr & Forman, LLP, 3400
12 Wachovia Tower, Birmingham, Alabama, on
13 the 23rd day of May, 2008, commencing at
14 12:57 p.m., JOE STUART, witness in the
15 above cause, for oral examination,
16 whereupon the following proceedings were
17 had:
18
19 MR. ROBERSON: All right.
20 This is the videotape deposition of Joe
21 Stuart. It's being taken in the case
22 pending in the United States District
23 Court for the Middle District of Alabama,

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1 Northern Division, styled Arthur T.
2 Watson, that's Terry Watson, plaintiff,
3 versus Alabama Farmers Cooperative, Inc.,
4 doing business as Bonnie Plant Farms,
5 defendant, CV-07-520.
6 My name is Jerry Roberson. I'm
7 the attorney for the plaintiff Terry
8 Watson, and I'm also operating the video
9 camera. I would ask all counsel of record
10 to state their name and the party they
11 represent.
12 MR. GERHARDT: My name is
13 Graham Gerhardt, and I'm appearing on
14 behalf of the defendant.
15 MR. ROBERSON: Would you swear
16 our witness, please, ma'am?
17
18 JOE STUART,
19 having been first duly sworn, was examined
20 and testified as follows:
21
22 THE COURT REPORTER: Usual
23 stipulations?

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1 MR. ROBERSON: Yes.
2 MR. GERHARDT: Yes, ma'am.
3
4 EXAMINATION BY MR. ROBERSON:
5 Q. Mr. Stuart, my name is Jerry
6 Roberson, we met just briefly before the
7 deposition.
8 Would you give me your full
9 name, please, sir?
10 A. Joe Wheeler Stuart.
11 Q. And your residence address,
12 including the zip code?
13 A. [REDACTED]
14 [REDACTED]
15 Q. And are you employed with
16 Bonnie Plant Farms?
17 A. Yes, sir.
18 Q. In what capacity, Mr. Stuart?
19 A. I'm a sales manager.
20 Q. For the entire nation?
21 A. Not now. I'm the sales
22 manager for the -- basically west of the
23 Mississippi River.

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1 Q. Okay. So there is another
2 sales manager for the other side of the
3 river?
4 A. There is now, yes.
5 Q. Okay. At one time before
6 y'all made that territorial division, were
7 you the sales manager for the whole U. S.?
8 A. Yes, sir, I was.
9 Q. Okay. When did that stop?
10 When did y'all realign?
11 A. Maybe two years ago.
12 Q. All right, sir. And what's
13 the extent of your education, Mr. Stuart?
14 A. I went four years to Troy
15 State, did not graduate, and -- that's
16 basically it.
17 Q. What was your course of study?
18 What were you majoring in?
19 A. Geography.
20 Q. Well, it's not hard to
21 understand how you got in the plant
22 business, then, if you were a geography
23 major.

2 (Pages 5 to 8)

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1 How long have you been in the
2 plant business, Mr. Stuart?
3 A. Since I was nineteen years
4 old, and I'm presently sixty-five.
5 Q. Okay. So you were working
6 while you were going to school?
7 A. This is seasonal work. And
8 I'd go to school -- I actually went to
9 school six years, but seasonal work.
10 Q. Okay. So in the spring season
11 you worked at Bonnie Plant, and you'd go
12 to school in the fall, is that the way it
13 worked?
14 A. That's correct.
15 Q. All right, sir. Now, you know
16 my client, Terry Watson?
17 A. Yes, sir.
18 Q. How long has he been working
19 for Bonnie Plant Farms, if you --
20 approximately, if you know?
21 A. I would guess for Bonnie Plant
22 Farm he has been probably working for --
23 approximately fifteen years.

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1 Q. Okay. Did he work in the
2 plant business before that?
3 A. He worked about ten years for
4 me.
5 Q. Okay. Well, maybe we need to
6 explain that.
7 When -- did you have a plant
8 company for a period of time?
9 A. I did, for about twelve or
10 fifteen years.
11 Q. And where was that business
12 located?
13 A. In New Summerfield, Texas.
14 Q. Okay. And what was the name
15 of it, sir?
16 A. Joe Stuart & Company.
17 Q. Okay. And was that business
18 acquired or merged in to Bonnie Plant
19 Farms?
20 A. Yes, sir.
21 Q. Okay. And approximately what
22 year did that take place?
23 A. Around '92.

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1 Q. So you have been knowing Terry
2 Watson for about thirty years?
3 A. I knew Terry at Troy State
4 when we were in school together down
5 there, and then he -- we lost contact for
6 about fifteen years. And then he came to
7 me when I had my company in Texas and I
8 gave him a job working for me.
9 Q. Okay. And he worked as a
10 route salesman for you?
11 A. I took him to a route in south
12 Louisiana and opened up the route for him,
13 trained him on the route, and he continued
14 on the route as a salesman for it.
15 Q. How long did he work as a
16 route salesman in Louisiana for you, for
17 your company, approximately?
18 A. I would say six to eight
19 years. I don't know, really. Maybe ten,
20 I don't know.
21 Q. And where was his route?
22 A. South Louisiana, on I-10 down
23 in southern Louisiana.

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1 Q. And then Bonnie Plant acquired
2 your company?
3 A. Yes, sir.
4 Q. Were you the only shareholder
5 in that company at --
6 A. Yes, sir.
7 Q. -- owned all of the stock?
8 A. Yes, sir.
9 Q. So they purchased your
10 company, and you went to work for Bonnie
11 Plant?
12 A. Uh-huh.
13 Q. Is that correct?
14 A. Yes, sir.
15 Q. Was that a part of the
16 purchase agreement, that you would go to
17 work for them? Or was that just something
18 that happened?
19 A. I can't really remember if
20 that was part of the reason. I mean -- of
21 course, it was a monetary figure was the
22 main thing, but it could have been.
23 Q. Okay. And when you operated

3 (Pages 9 to 12)

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1 your plant business, where did you sell
2 plants? I mean, were you a nationwide
3 company too?
4 A. No, no. No, no.
5 Q. You were smaller in area?
6 A. Yeah, I was a regional type
7 company. East Texas, Oklahoma, Arkansas,
8 western Kentucky, southern Illinois,
9 southern Missouri was basically my
10 territory.
11 Q. Okay. Now, when Terry went to
12 work for Bonnie Plant when they acquired
13 your company, did he remain a route
14 salesman in south Louisiana?
15 A. Yes, he did, on the same route
16 that he was running for me.
17 Q. Okay. So really nothing
18 changed --
19 A. Nothing changed.
20 Q. -- from his standpoint other
21 than the name?
22 A. That's correct.
23 Q. Okay. And a route salesman's

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1 couple, several.
2 A. The station manager for Terry
3 when he worked for south Louisiana still
4 with Bonnie Plant Farms?
5 Q. Yes.
6 A. That would be Bill Reiner.
7 Q. I'm sorry, Bill --
8 A. Bill Reiner, R-e --
9 R-e-i-n-e-r, I think.
10 Q. Is he still with the company?
11 A. He is still the station
12 manager in Louisiana --
13 Q. Okay.
14 A. -- I mean, in Texas.
15 Q. So the station for that
16 location in Louisiana was in Texas?
17 A. Yes, sir, just right across
18 the line.
19 Q. Okay. Now, at some point, I
20 believe it was around 2003 or 2004, Terry
21 Watson initiated a transfer; do you -- do
22 I understand that correctly?
23 A. He requested to go to a

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1 job is just to sell plants, and they have
2 to stock them in the various locations,
3 correct?
4 A. That's some of the things they
5 have to do. There are a lot of other
6 things they have to do.
7 Q. Okay. Well, I have never
8 worked as a route salesman, so tell me
9 what they are required to do.
10 A. Well, they have to load the
11 truck, get in and out of the truck, see
12 what kind of inventory they have, go in
13 and meet the customer with a pleasing
14 personality and a positive mental
15 attitude, shake their hands and establish
16 a relationship with them, and work the
17 route, pick up the old stuff, put them
18 back on the truck, carry them back to the
19 greenhouse location, unload the truck and
20 reload the truck back.
21 Q. Okay. And who -- who was the
22 station manager for Terry when he worked
23 at south Louisiana? I suspect he had a

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1 smaller route that didn't require as much
2 work.
3 Q. Okay. A shorter route?
4 A. A shorter route and one that
5 did not have fall routes on it where he
6 wouldn't have to work in the fall. So he
7 could draw his unemployment and not have
8 to work in the fall.
9 Q. Okay. And one of the reasons
10 for that was because he was under -- going
11 to undergo some surgery that would -- he
12 would undergo in the fall, correct?
13 A. I did not know that.
14 Q. Okay. Well, you know now that
15 he did --
16 A. I know now -- I know now that
17 he went through. At the time I didn't
18 know that.
19 Q. Okay. Well, the point of my
20 question is that Terry -- this transfer
21 was initiated by Terry, correct?
22 A. It was probably a fifty/fifty
23 deal between Butch Stuart and Terry

4 (Pages 13 to 16)

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1 Watson. I don't know who actually said
2 let's see if we can do this first. I
3 really don't know who said that first.
4 Q. Okay. But then -- both of the
5 salesmen wanted to swap routes; and
6 management, including you, agreed or
7 approved that swap, that transfer,
8 correct?
9 A. We did.
10 Q. Okay. And I assume had --
11 Terry had remained employed for about
12 twenty-five years; I assume he was doing a
13 capable job or a satisfactory job as a
14 route salesman?
15 A. Where?
16 Q. In Louisiana.
17 A. He was doing a satisfactory
18 job.
19 Q. Okay. Now, Mr. Stuart, did --
20 a lot of -- I've take -- I've represented
21 several salesmen, not plant salesmen, but
22 salesmen in the past. And normally the
23 salesmen I've represented on an annual

1 sales goal; do you understand what I'm
2 talking about?
3 A. Sure.
4 Q. Okay. And at Bonnie Plant,
5 how do y'all arrive at a sales goal for a
6 particular territory?
7 A. We would take a territory and
8 look back at the history of it of how it
9 has been selling. And every route we
10 have, nearly every route has an increase
11 over the year before. It's common -- it's
12 uncommon to have a decrease. Something is
13 wrong if we have a decrease. But every
14 route we have has an increase, so we base
15 that on our projected increase on each
16 route and establish a goal for that route.
17 Q. All right. I'm just going to
18 throw out a figure. Let's say we sold
19 three hundred thousand dollars' worth of
20 plants in 2007, okay?
21 A. Uh-huh.
22 Q. Your sales goal for 2008 for
23 that route would be three hundred and what

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1 basis receive a written job evaluation.
2 Did y'all do that at Bonnie Plant?
3 A. No, sir, we didn't do that.
4 Q. Okay. So there aren't any
5 written job evaluations for any of your
6 salesmen?
7 A. We have a salesman's job
8 description. I think Tina Johnson wrote
9 one up this past year or two.
10 Q. Just the job description. But
11 as far as a form or a standardized way --
12 A. No.
13 Q. -- y'all evaluate salesmen --
14 A. No, sir.
15 Q. -- y'all don't have one of
16 those?
17 A. We don't do that.
18 Q. Okay. I just wanted to make
19 sure. But you know what I'm talking
20 about?
21 A. Yeah.
22 Q. All right. Well -- and in
23 the -- I -- every salesman normally has a

1 thousand? How much of a percentage
2 increase would you expect or would you
3 hope for?
4 A. Depending on how many
5 Wal-Marts and how many Home Depots or
6 something like that has opened up. They
7 are opening up some all the time, and so
8 depending on what kind of new -- new
9 business was coming into the route or we
10 split the route up to try and increase our
11 service capabilities, I would say around a
12 seventy-five to a hundred thousand.
13 Q. Of increase?
14 A. Is what we expect.
15 Q. So if you had a three hundred
16 thousand dollar route, you would expect to
17 have a four hundred thousand dollar --
18 A. Three seventy-five to four
19 hundred, sure would. Wal-Mart may do
20 twenty-five thousand. Three Wal-Marts
21 open up and you have got that covered,
22 even if you didn't do better than what you
23 did the last year.

5 (Pages 17 to 20)

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1 Q. Okay. So your sales quota or
2 goal will depend in part on any new stores
3 that come on line on your route, is that a
4 fair statement?

5 A. That's a fair statement. And
6 the territory, the geographic territory
7 that we are working. A route in New York
8 would be expected to make more than one in
9 Kansas, for population reasons.

10 Q. Okay. So how concentrated the
11 population is can cause a difference too?

12 A. Yes, sir.

13 Q. All right. And -- now -- but
14 I understand that every year you realign
15 the routes to try to keep them equal or
16 balanced, is that correct?

17 A. No, sir, that's not correct.

18 Q. Okay. Explain to me, do y'all
19 routinely make changes in the routes?

20 A. Yes, sir.

21 Q. Okay. How do y'all change the
22 routes?

23 A. We change the route due to the

1 correct, from year to year?

2 A. Repeat that question, please,
3 sir.

4 Q. Okay. When you compare your
5 sales on the route from one year to the
6 next, you have to be careful because you
7 are comparing apples to oranges if the
8 route has changed; do you agree with that?

9 MR. GERHARDT: Object to the
10 form.

11 A. Can you rephrase that
12 question?

13 Q. Yeah. You agree with me that
14 the routes change from year to year, the
15 number of stores and the locations that
16 are serviced?

17 A. Some of our routes do change
18 from year to year.

19 Q. Okay. And if they change,
20 then you have to be careful when you
21 compare the sales from one year to the
22 sales -- just the figure for the sales the
23 following year, correct?

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1 service capability on it. The money is
2 not really a factor. We have to satisfy
3 the customers. And if we are a little lax
4 on doing some service work, we may take
5 some customers off of this route, add to
6 this truck, or create another route
7 altogether and put on another truck. We
8 do that all the time all over the country.

9 Q. Well, I apologize, I may have
10 misspoke, but the point I'm trying to make
11 is that your routes and the customers on
12 your routes also vary from year to year;
13 is that a fair statement?

14 A. Yes.

15 Q. I mean --

16 A. The number of customers on the
17 route --

18 Q. Right.

19 A. -- can vary from year to year.

20 Q. Okay. So when we compare the
21 sales for one year, we have to be careful,
22 because that same route may have lost some
23 stores or may have added some stores,

1 A. Careful to who?

2 Q. Well, I may have lost a
3 Wal-Mart store or a large account in the
4 following year, it may have been
5 reassigned to another route or, as you
6 say, we may have created another route, so
7 my sales may actually go down even though
8 I sold more to everybody else?

9 A. It's very rare that we have
10 sales that go down.

11 Q. Okay. Now, when Terry went to
12 -- is it Bells, Tennessee?

13 A. Yes, sir, I guess.

14 Q. Okay. And he worked on that
15 route for two years, Butch's route? They
16 swapped and he worked Butch's route?

17 A. They swapped.

18 Q. Did he do a satisfactory job
19 as a salesman up there in Tennessee?

20 A. The first year?

21 Q. At any time, however long he
22 was up there.

23 A. I would say that his work was

6 (Pages 21 to 24)

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1 a little less than satisfactory.
2 Q. And as the national sales
3 manager, would you -- would you talk to
4 the station managers from time to time?
5 A. Yes.
6 Q. Did you have any complaints
7 about Terry Watson from the station
8 manager?
9 A. Yes.
10 Q. What were those -- the nature
11 of those complaints, sir?
12 A. Most of the complaints that
13 come from Terry is the fact that we deal
14 with a perishable product. And a
15 perishable product, quick as you can get
16 it out on the route, the longer the shelf
17 life. The longer the shelf life means
18 more dollars, better chance for it to
19 sell. Terry was somewhat a little lax in
20 getting all of the customers worked on a
21 timely basis.
22 Q. Okay. Are there any written
23 documents in Bonnie Plant Farm documents

1 it's a W-2 or something in the nature of
2 that for Terry Watson for the year 2000.
3 Is that what -- your
4 understanding of what that is?
5 A. (Reviewing document.) Yes,
6 that's what it looks like.
7 Q. I mean, some type of earnings
8 statement for Terry Watson, correct?
9 A. Yes, sir.
10 Q. And in 2000 he would have been
11 working that south Louisiana route,
12 correct?
13 A. Yes, sir, I think so.
14 Q. All right.
15 (Whereupon, Plaintiff's
16 Exhibit 2 was marked for
17 identification.)
18 Q. Now, I want to show you what
19 I'll marked as Exhibit 2, which is a W-2
20 form for 2001 for Terry Watson.
21 And can you read the writing on
22 there? What -- what is reported as his
23 wages for that year?

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1 that would indicate that, that would
2 corroborate that complaint, sir?
3 MR. GERHARDT: Object to the
4 form.
5 Q. You can answer.
6 A. There are no documents that I
7 know of, because we don't keep written
8 documents -- or document things like that.
9 Q. Mr. Stuart, I'm going to show
10 you some documents that have been made
11 available to me today by your attorney,
12 and I'm going to mark the first -- have
13 you had a chance to look at these before
14 the deposition?
15 A. Before right now?
16 Q. Yes, sir.
17 A. I don't -- no, sir.
18 (Whereupon, Plaintiff's
19 Exhibit 1 was marked for
20 identification.)
21 Q. Well, let me show you what
22 I've marked as Exhibit 1, and that looks
23 like just some kind of printout. I assume

1 A. In 2001?
2 Q. Yes, sir.
3 A. Let me see if I can find it
4 here. (Reviewing document.) Looks like
5 twenty-nine thousand five thirty-five
6 eighty. Does that look right to you?
7 It's sort of crimped in there, you'll see
8 what I'm talking about.
9 Q. Yeah, they have got -- they've
10 got wages of twenty-nine five thirty-five,
11 but then they have Social Security wages
12 of thirty-four nine fifty-four. Now, do
13 you know why that is?
14 A. No, sir.
15 (Whereupon, Plaintiff's
16 Exhibit 3 was marked for
17 identification.)
18 Q. Well, if you would, I'll ask
19 you -- and if you will tell me what the
20 Social Security wages are for what I have
21 marked as Exhibit 3 which is for 2002 for
22 Terry Watson, the Social Security wages?
23 A. (Reviewing document.) Looks

7 (Pages 25 to 28)

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1 like four thousand fifty-nine forty-one.
2 There is a little line in there, it's sort
3 of hard to read.
4 Q. It's forty thousand four
5 hundred fifty-nine.
6 A. Okay. Okay.
7 Q. All right. And these guys
8 that work as route salesmen, what's
9 reported on their W-2, is that the money
10 that they earn after they pay all of their
11 expenses, you know, the -- their helpers
12 and everybody?
13 A. It's my understanding that is.
14 Q. Okay. In other words, it's
15 lower than their commissions, they will
16 make more than that in commissions, but
17 out of the commissions on the route they
18 have to pay certain expenses, correct?
19 A. Yes, sir.
20 Q. And what expenses do they have
21 to pay?
22 A. Motel rooms if they spend the
23 night on the road, a lot of them -- if

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1 it's a short route, you go back home every
2 night and you don't spend the night on the
3 road. Some of them have long routes and
4 have to spend the night on the route and
5 stuff like that.
6 Q. Okay. So motel, their helper,
7 and anything else?
8 A. That's basically about it.
9 Q. Okay. All right. And then
10 let me show you what I will mark as
11 Exhibit 4, which is his -- again, he's
12 still working south Louisiana during this
13 time period. I believe he went to Bells,
14 Tennessee in 2004, but he has testified
15 about that, so --
16 (Whereupon, Plaintiff's
17 Exhibit 4 was marked for
18 identification.)
19 Q. This is -- this is his W-2 --
20 what are his wages in 2003, his Social
21 Security wages in 2003?
22 A. Twenty-eight something ninety
23 point nineteen. I can't read that little

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1 line there. Do you see what I'm talking
2 about?
3 Q. Yeah, it looks like
4 twenty-eight four ninety. Twenty-eight
5 forty ninety. All right.
6 (Whereupon, Plaintiff's
7 Exhibit 5 was marked for
8 identification.)
9 Q. And Exhibit 5, his wages --
10 his W-2 in 2004, his Social Security wages
11 are twenty-three oh twelve, is that
12 correct?
13 A. Yes, sir, that looks right. I
14 can see that figure.
15 (Whereupon, Plaintiff's
16 Exhibit 6 was marked for
17 identification.)
18 Q. Let me show you Exhibit 6,
19 which is W-2 for 2005. And do you agree
20 with me that his Social Security wages are
21 listed at twenty-four thousand five
22 eighty-eight?
23 A. Yes, sir, that's what it looks

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1 like.
2 (Whereupon, Plaintiff's
3 Exhibit 7 was marked for
4 identification.)
5 Q. 2006, his Social Security
6 wages are forty-five nine twelve?
7 A. Yes, sir.
8 (Whereupon, Plaintiff's
9 Exhibit 8 was marked for
10 identification.)
11 Q. And in 2007, his Social
12 Security wages are eighteen oh
13 seventy-nine?
14 A. Yes, sir, that looks correct.
15 Q. Okay. Now, after Terry Watson
16 worked the spring of 2005, did you have
17 any contact with him after his surgery,
18 his knee surgery?
19 A. I don't think so.
20 Q. Well, do you know why he
21 wasn't returned to his route in Bells,
22 Louis -- Bells, Tennessee in 2006?
23 A. Why he wasn't returned there?

8 (Pages 29 to 32)

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1 Q. Yeah.
2 A. Because the station manager,
3 Mr. Adam Alley, requested that he not --
4 that he didn't want to fool with him
5 again. It has been my experience and my
6 history to -- if any of the station
7 managers that -- who is the salesman's
8 immediate supervisor requests that they do
9 not want someone back the next year, I
10 have always gone along with that. I don't
11 want to create an atmosphere that's not
12 conducive to a good salesmanship. And I
13 felt like a situation where one man
14 doesn't want another one back would create
15 a problem, so that's why he was not.
16 Q. And when did Mr. Alley have a
17 conversation with you about he didn't want
18 Terry back?
19 A. It was something -- it was
20 after the season was over. I can't
21 remember exactly when it was.
22 Q. And so you knew Terry wasn't
23 going back to that route, correct?

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1 A. I hadn't -- I hadn't told
2 Terry about that at that time, but I think
3 I -- sometime in the early fall or
4 something -- I don't really remember when
5 I told Terry, but I did tell Terry.
6 Q. Well, where did you tell Terry
7 he was going to work?
8 A. I told him I would try to find
9 him something and try to help him out
10 where he could stay on the insurance.
11 That's what he requested he wanted to do,
12 that he was just working for the
13 insurance, and I said well, I will try to
14 find him something, so -- and that's how
15 we tried to create a route down in
16 Donaldsonville, Louisiana, just so Terry
17 would have a job.
18 Q. Well, let me show you what I
19 have marked -- what I will mark as Exhibit
20 9.
21 (Whereupon, Plaintiff's
22 Exhibit 9 was marked for
23 identification.)

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1 Q. And this is a letter that
2 Terry Watson gave to Tate Gatlin, who is
3 your -- Tate is -- what do you call him,
4 your --
5 A. I think you would call him the
6 safety director.
7 Q. Safety director. In other
8 words, all your route salesmen drive a
9 truck, correct?
10 A. Yes, sir.
11 Q. And as part -- in order to be
12 a route salesman, they have to be approved
13 as a driver by DOT, correct?
14 A. Correct.
15 Q. So they have to have a bi --
16 is it biannual physical or something?
17 They have to have some kind of card?
18 A. Or annual physical.
19 Q. Annual physical, okay. So
20 this is the letter Terry gave Tate on
21 January 10th, 2006. And apparently as of
22 that date, no one had told Terry where he
23 was working. Would you look at Exhibit 9?

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1 MR. GERHARDT: Let me object
2 to the form of that statement.
3 Q. Have you seen that document
4 before today?
5 A. I have not seen this. I
6 couldn't -- I don't remember seeing this.
7 (Whereupon, Plaintiff's
8 Exhibit 10 was marked for
9 identification.)
10 Q. Well, let me show you Exhibit
11 10. Well, after Tate got that letter, did
12 he call you?
13 A. I don't remember him calling
14 me.
15 Q. Well, what would Tate do -- if
16 he got a complaint of age discrimination,
17 what would he do?
18 MR. GERHARDT: Object to the
19 form.
20 A. I don't know what Tate would
21 do.
22 Q. I see. Well, do y'all have a
23 policy in writing out there at Bonnie

9 (Pages 33 to 36)

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1 Plant Farms about age discrimination?
2 A. A policy in writing? We are
3 aware of all types of discrimination, and
4 I don't know if it's in writing out there,
5 but we -- we are aware of that.
6 Q. Well, do you know how old
7 Terry Watson was on January 10th, 2006?
8 A. Well, I'll just have to use
9 simple arithmetic. If he is sixty-two
10 years now and that was two years ago, how
11 about sixty?
12 Q. Sixty. He is sixty -- he is
13 actually going to turn sixty-one on
14 [REDACTED] And he had
15 had a knee replacement and he's asking for
16 a job. He wanted the job in Tennessee,
17 and he did not understand why he had not
18 been allowed to return to his route.
19 Did you have a conversation
20 with Terry about this time?
21 MR. GERHARDT: Object to the
22 form.
23 A. I don't even know if Terry was

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1 physically able to work at that time. And
2 I may have had a conversation with him,
3 but I told him I -- and I don't know the
4 timetable of that, when it actually
5 occurred, but I do remember telling him I
6 would find him something.
7 Q. Okay. Well, let me show you
8 what I marked as Exhibit 10, which is a
9 letter dated February 2nd. It's to Tate,
10 but it's copied to you, to Joe Stuart.
11 Did you receive that letter?
12 A. (Reviewing document.) I don't
13 remember seeing this letter, sir.
14 Q. Well, did you take any action
15 after this letter was sent to Tate and to
16 you?
17 A. Well, I don't remember seeing
18 the letter, but -- somewhere after that
19 period there, but I don't remember seeing
20 that letter, I did find -- try to create
21 an opening in Donaldsonville, Louisiana
22 for Terry.
23 Q. Well, were all your routes

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1 filled in January of 2006? Did you have
2 any open routes?
3 A. I think at that time we didn't
4 have any open routes.
5 Q. You did or did not?
6 A. Did not.
7 Q. Let me show you what I will
8 mark as Exhibit 11.
9 (Whereupon, Plaintiff's
10 Exhibit 11 was marked for
11 identification.)
12 Q. Y'all recently started some
13 policy where y'all have your drivers seen
14 by a -- some type of therapist or
15 something, physical therapist?
16 A. Have we recently started that?
17 Q. Yeah, a wellness group?
18 A. I think Tate may have
19 something like that going. But he and I
20 are separate, I don't know what all he may
21 have going on there.
22 Q. Let me show you what has been
23 marked as Exhibit 11 and ask you if you

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1 have ever seen that document?
2 A. (Reviewing document.) No,
3 sir, I don't remember seeing that before.
4 (Whereupon, Plaintiff's
5 Exhibit 12 was marked for
6 identification.)
7 Q. Well, I will show you what
8 I've marked as Exhibit 12 and ask you if
9 you have ever seen this document. It's a
10 release statement from Terry Watson's
11 physician dated January 26, 2006.
12 A. (Reviewing document.) I
13 didn't even know he was in this kind of
14 shape. I haven't seen that before.
15 Q. So none of the actions you
16 took were because of Terry Watson's
17 health, that is to create him a position?
18 A. No, the actions I took was
19 because of his -- not because of his
20 health or his age.
21 (Brief interruption.)
22 MR. ROBERSON: Excuse me, I
23 meant to turn that off. I apologize.

10 (Pages 37 to 40)

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1 Q. (BY MR. ROBERSON:) So you
2 weren't aware of any restrictions that
3 Terry Watson had as concerns his work in
4 the spring season of 2006?
5 A. I wasn't concerned with any
6 health issues that he had at that time. I
7 was just concerned with the complaints
8 that we had gotten on the route.
9 Q. And the complaint coming from
10 his station manager, Mr. Alley?
11 A. Station manager, and I had
12 some customers call me personally and tell
13 me that the man is asleep in the truck and
14 he is not working the route properly.
15 Q. Who called you?
16 A. I think I had one in
17 Summerville, Tennessee. Boswell Feed &
18 Seed, Mr. Frank Boswell, I started him up
19 myself, he is an old friend of mine. I
20 also had another one from the Farmers
21 Co-Op in Selmer, Tennessee.
22 Q. All right. Who -- what's the
23 name of the individual that called you

1 just two that I personally got.
2 Q. Who -- who is the other one?
3 A. Farmers Co-Op in Selmer,
4 Tennessee. I don't know who called from
5 the store.
6 Q. Selma?
7 A. S-e-l-m-e-r.
8 Q. And it was service complaints
9 or lack of service complaints?
10 A. Lack of service, yes, sir.
11 Q. Well, have you ever received
12 any calls like that on any other route
13 salesmen?
14 A. I have occasionally. Not many
15 times, but occasionally.
16 Q. And did you transfer them?
17 A. On occasions, on one or --
18 once or twice I might have.
19 Q. Can you give me the names of
20 anybody you transferred?
21 A. I usually -- sir?
22 Q. Can you give me the names of
23 anybody you have transferred after

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1 from Summerville, Tennessee?
2 A. His name is -- Boswell Feed &
3 Seed is the name of his store.
4 Q. And do you know who called
5 you?
6 A. I think it was Frank Boswell
7 himself, but I'm not for sure which one of
8 the people at the store called me.
9 Q. And when was this --
10 A. One of the -- one of the
11 employees at the store called me.
12 Q. When was this?
13 A. This was in -- at -- toward
14 the middle to the end of the season in
15 Bells in -- whatever his second trip was
16 up there.
17 Q. 2005?
18 A. I guess.
19 Q. And why wouldn't they call Mr.
20 Alley?
21 A. Well, they had called Mr.
22 Alley, I guess. He had told me about some
23 similar complaints that he had. Those are

1 receiving a complaint like that?
2 A. Well, let's see here. Let me
3 stop and think here. Removed -- removed a
4 boy from Salt Lake City this year and sent
5 him to Plainville, Kansas. He later was
6 caught with liquor in his truck and we
7 fired him --
8 (Reporter interruption.)
9 A. He later was caught with
10 liquor in his truck and we had to fire
11 him. Moved a boy from Milton, Wisconsin
12 to Kennedyville, Maryland.
13 Q. Do you know either of those
14 individuals' names?
15 A. That man -- that boy's name is
16 Nick Reeder.
17 Q. Nick?
18 A. Nick Reeder, R-e-e-d-e-r. And
19 that guy in Kansas we fired, I don't
20 remember his name.
21 Q. This route that Terry -- so
22 for almost thirty years the only transfer
23 Terry Watson had was one that he

11 (Pages 41 to 44)

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1 initiated, correct?
2 A. One that him and the other
3 salesman collabor -- collaborated on.
4 Q. Okay. And since his two
5 letters to you -- or two letters, one to
6 Tate Gatlin and one to you and Tate
7 Gatlin, and his complaint of age
8 discrimination, beginning in the spring of
9 2006, how many different routes has Terry
10 held?
11 MR. GERHARDT: Object to the
12 form.
13 Q. You sent him to --
14 A. Where was he at?
15 Q. He was in Bells, Tennessee and
16 you sent him to Donaldsonville, Louisiana.
17 A. He didn't stay there but --
18 Q. A couple of weeks?
19 A. Two weeks, two or three weeks.
20 Q. All right. And then he went
21 to Jasper?
22 A. We had a route to come open,
23 it would make more money for Terry, a

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1 chance to do better. Since we really
2 didn't really have a route for him in
3 Donaldsonville, I moved him to that route.
4 And he was very appreciative of it, too,
5 by the way.
6 Q. And that was the route that --
7 you sent him to Donaldsonville, will you
8 agree with that?
9 A. To try to create a job for
10 him.
11 Q. Okay. And you sent him to
12 Jasper?
13 A. Where there was a route
14 already available.
15 Q. Okay.
16 A. He was tickled to death with
17 it.
18 Q. What route is he on now?
19 A. He is on a route in Beeville,
20 Texas.
21 Q. So that's three routes,
22 correct?
23 A. Yes, sir. But -- no, it's

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1 just two routes. He never had a route in
2 Donaldsonville, Louisiana.
3 Q. Okay. It was a job, but it
4 wasn't a route?
5 A. Right.
6 Q. All right. And that job, he
7 didn't receive any commissions, he just
8 got a draw, correct?
9 A. He got -- he -- he has been on
10 the draw for fifteen years from us, never
11 been cut off at all, always been on the
12 insurance.
13 Q. Okay. And when he worked in
14 Jasper, his draw exceeded his commissions,
15 correct?
16 A. I think that's what the
17 records show.
18 Q. Okay.
19 A. But I don't deal in that.
20 Q. And in -- in Texas -- is he
21 going back to that route next year in
22 Beeville, Texas?
23 A. In Beeville?

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1 Q. Yes, sir.
2 A. If the station manager down
3 there says they want him back, then I will
4 certainly put him back down there, unless
5 I can find him a better route somewhere.
6 And I will try to find him a better route,
7 try to help him every way I can.
8 Q. Who held the route in Jasper
9 before Terry, what's the gentleman's name
10 that left that route?
11 A. I don't remember. We have got
12 four hundred and sixty-two salesmen, and
13 each one of them has got a helper, so --
14 Q. Who took Terry's route, Leslie
15 Braun in Tennessee?
16 A. Les Braun took over Bonnie's
17 route in Tennessee.
18 Q. And how old is he, do you
19 know?
20 A. He is in his thirties. I
21 don't know how old he is.
22 Q. Early thirties?
23 A. I guess.

12 (Pages 45 to 48)

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1 Q. Mr. Stuart, is Terry Watson a
2 good employee?
3 MR. GERHARDT: Object to the
4 form.
5 A. He has been a good employee,
6 yes, sir.
7 Q. Can't really be a bad employee
8 for thirty years, can you?
9 MR. GERHARDT: Object to the
10 form.
11 A. Can you be a bad employee for
12 thirty years. Reword that to me.
13 Q. Well, if he wasn't doing an
14 adequate job, he wouldn't have been there
15 for thirty years, would he?
16 MR. GERHARDT: Object to the
17 form.
18 A. Not particularly. I tried to
19 help Big Terry because he has been my
20 friend, and even though I -- he wasn't
21 doing a good job, I still tried to cover
22 up for him and find him a job.
23 Q. So it's your testimony that

1 depends on the service. If you give good
2 service, they are going to like you. And
3 you have got a quality product, of course.
4 Q. And does Terry know the job,
5 know what needs to be done?
6 A. I would think he should, yes,
7 sir.
8 Q. And has he demonstrated that
9 he is capable of doing it?
10 MR. GERHARDT: Object to the
11 form.
12 Q. You can answer.
13 A. At times he has destrim --
14 demonstrated that, yes, sir.
15 Q. How old is Adam Alley?
16 A. You know, I don't really know,
17 I would say -- I would just guess and say
18 early forties, but I do not know.
19 Q. Now, when y'all hire a new
20 salesperson to work as a route salesman
21 out there, is that a decision that you are
22 involved in normally, at least if it's on
23 your side of the Mississippi?

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1 you were covering up for Terry Watson in
2 the last two years?
3 A. No, sir, that's not my
4 testimony.
5 Q. Oh. I'm sorry, I
6 misunderstood you. Well, how -- when did
7 you cover up for him?
8 A. I never have covered up for
9 him, but I tried to always find him a job
10 where he could stay on the payroll and
11 keep working and everything.
12 Q. Well, do you like him?
13 A. Sir?
14 Q. Do you like Terry?
15 A. Yes, sir.
16 Q. Do the customers seem to like
17 him?
18 MR. GERHARDT: Object to the
19 form.
20 A. Well, some customers liked him
21 and some probably didn't like him.
22 That's -- that can be said about a lot of
23 our salesmen, though, I suppose. It all

1 A. Well, I was involved in it a
2 lot more than I am now, but now we have
3 someone else who pretty well strictly gets
4 involved in the interviewing and checking
5 prospective salesmen out and stuff like
6 that. I used to do a good bit of that.
7 Q. Who does it now?
8 A. Tim Trussell and Dan Jacobsen.
9 Q. Well, are you made aware when
10 they hire a new person?
11 A. Not in every instance, no.
12 Q. I'm sorry?
13 A. Not in every instance.
14 Q. Well, to your knowledge, in
15 the past five years, has Bonnie Plant
16 Farms hired a salesman who was age sixty
17 or over at the time that they hired him?
18 A. Yes, sir.
19 Q. Who was that, please, sir?
20 A. We have a man on a route right
21 now in Kansas who is seventy-one years
22 old, Earl Ledbetter.
23 Q. When did they hire Mr.

13 (Pages 49 to 52)

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1 Ledbetter?

2 A. Earl Ledbetter has been
3 working for us for about thirty years.

4 Q. No, you misunderstood my
5 question, or I didn't make it clear.

6 Have y'all hired a salesman who
7 at the time you hired him he was sixty
8 years old?

9 A. I think we hired -- we've got
10 a man in North Dakota now, I think his
11 name is -- ah -- it's Dana Edwards or Dana
12 something or other, and I think he's
13 sixty-one.

14 Q. When was he hired?

15 A. This year. First year he
16 worked for us.

17 Q. So he was hired after Terry
18 Watson's lawsuit alleged age
19 discrimination, correct?

20 A. Yeah, but before that I had
21 hired a guy before I even knew anything
22 about Terry, Doodle Barnett was his name,
23 he was sixty-eight years old. I actually

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1 didn't know he was sixty-eight, but he was
2 sixty-eight, and done a pretty good job.

3 Q. Do you think folks can make
4 valuable contributions to the work force
5 regardless of their age?

6 A. I certainly do.

7 Q. Some folks won't work worth a
8 crap and they are under age forty, right?

9 A. I'm certain that's true.

10 Q. Well, did you get Mr. Watson's
11 EEOC charge?

12 A. Did I get what?

13 Q. Terry Watson filed an EEOC
14 charge. Are you aware of that?

15 A. I am now, of course.

16 Q. When were you first made aware
17 of it, sir?

18 A. I believe I was informed by
19 Tina Johnson, and I really don't remember
20 exactly when she told me that.

21 (Whereupon, Plaintiff's
22 Exhibit 13 was marked for
23 identification.)

1 Q. Let me show you what I've
2 marked as Plaintiff's Exhibit 13. This is
3 Terry Watson's EEOC charge, and it was
4 received by the EEOC on June the 2nd --
5 I'm sorry, June 6th of 2006, and it should
6 have been forwarded to Bonnie Plant Farms
7 shortly thereafter.

8 A. (Reviewing document.)

9 Q. Have you seen that document
10 before today?

11 A. No, sir.

12 Q. Well, who responds to EEOC
13 charges for Bonnie Plant Farms?

14 A. I think Tina Johnson --
15 MR. GERHARDT: Object to the
16 form.

17 A. I think Tina Johnson at AFC
18 does that.

19 Q. What is her position, sir?

20 A. She's in charge of human
21 resources, I believe. I'm not sure about
22 that. I don't know.

23 Q. Well, if they have a

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1 salesperson making a complaint, a charge
2 of age discrimination, would they come and
3 talk to you about it?

4 A. She called and told me about
5 that.

6 Q. So you were aware of it after
7 -- shortly after Bonnie Plant --

8 A. Not -- you asked me if I had
9 seen that. I was aware when Tina called
10 me. I don't remember when she called.

11 Q. Okay. She didn't show you the
12 document?

13 A. No, sir.

14 Q. When Terry sent that second
15 letter in February of 2006, did he come
16 and meet with you?

17 A. What was the time frame of
18 that?

19 Q. Somewhere sounds like
20 approximately February of 2006.

21 A. I think he did. And that's
22 where I said I found him something in
23 Donaldsonville, Louisiana, if I have got

14 (Pages 53 to 56)

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1 the right time period here.
2 Q. Did he tell you he thought he
3 was being discriminated against at that
4 meeting?
5 A. I think he did, sir. And I
6 told him we had people out here already
7 older than you, Terry.
8 Q. Well, did you tell him that
9 Adam Alley didn't want him back?
10 A. At that time, yes, sir.
11 Q. That's what you said to him?
12 A. I said that Adam has requested
13 that he not get you back and I'm going to
14 find you something else, and I did.
15 Q. Do you agree with me that
16 Terry Watson has made less money in his
17 subsequent routes than he was making in
18 Tennessee?
19 MR. GERHARDT: Object to the
20 form.
21 Q. You can answer.
22 A. Do I agree that he has made
23 less money?

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1 Q. Yeah, he has had less sales,
2 less commissions and made less money?
3 A. I agree that he had less
4 sales, but some of it was his own fault
5 for having less sales.
6 Q. Well, the route that you
7 assigned to him after his complaint of age
8 discrimination, did it have more sales
9 than the Bells, Tennessee route in 2004
10 and '5, sir?
11 A. He did not have more sales,
12 but it could have had.
13 Q. Well, Terry Watson wasn't
14 working there then, was he?
15 A. Working where?
16 Q. On these other routes in 2004
17 to 2005. So you knew that you were
18 transferring Terry Watson to a route that
19 had less sales than the one he came from,
20 correct?
21 A. Well, I knew that the route he
22 was transferring to would have less sales,
23 but I thought the potential of this other

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1 route could pick it up to where he would
2 actually have more sales if he was a good
3 hustler than what he had in the one he was
4 moving from.
5 Q. And you agree with me that
6 Terry told you at your meeting in February
7 that he believed he was being
8 discriminated against, correct?
9 MR. GERHARDT: Object to the
10 form.
11 Q. Correct?
12 A. When did Terry do what, now?
13 Q. Terry Watson met with you and
14 made a complaint of age discrimination,
15 correct?
16 A. He didn't -- he didn't really
17 make a complaint of age discrimination,
18 but -- yeah, he met with me and I told him
19 about the new route in Donaldsonville,
20 Louisiana, of a new -- a chance for him to
21 stay on the payroll in Donaldsonville,
22 Louisiana.
23 Q. And, in fact, the only routes

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1 he has been assigned by you have been long
2 routes, correct?
3 A. No, sir, that is not correct.
4 Q. Is the route he is on now a
5 long route?
6 A. The route he is on now is
7 longer than the one that he was on, but
8 the route that he had in Jasper was
9 probably shorter than the one he was on.
10 Q. Well, why did you move him
11 from Jasper to Texas?
12 A. I moved him from Jasper
13 because Joey Padgett had hired someone
14 else the next -- the next year to run the
15 route and really expressed somewhat
16 interest that he would prefer that he
17 didn't hire Terry back -- or that Terry
18 didn't come back.
19 Q. Is there anything in writing
20 about that?
21 A. No, sir.
22 Q. Who is the station manager
23 that Terry is working for now?

15 (Pages 57 to 60)

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1 A. I believe his name is Chris
2 Hall.
3 Q. Have you had any discussions
4 with Chris about the job Terry is doing?
5 A. Early in the year we did, but
6 that --
7 Q. And what kind of job is he
8 doing?
9 A. We had some complaints for him
10 earlier. And we documented these
11 complaints this time around.
12 Q. How did you document them?
13 A. We got phone calls from
14 customers, Chris Hall did, and he had a
15 little phone call and he would write in
16 the complaints and the telephone number of
17 the person that called. And so that's how
18 he did that, to my knowledge.
19 Q. Did y'all do that for anybody
20 besides Terry Watson?
21 A. Oh, yeah, we try to -- we
22 don't -- we don't document everything, but
23 we -- now we try to -- or now -- we always

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1 have done it to a certain extent. If we
2 get a complaint, we try to write it down
3 on a notepad and pass it on to the
4 salesman, this is what this store says, et
5 cetera.
6 Q. Can you name any salesmen
7 other than Terry Watson that you have done
8 that for?
9 A. That we have --
10 Q. Yeah, that you have documented
11 a complaint and given it to them.
12 A. Yes, sir, I can.
13 Q. Who?
14 A. Billy Ross.
15 Q. You have four hundred
16 salesmen --
17 A. Station manager in Oklahoma
18 would be Billy Ross. Another one would be
19 up in -- Brandon Davis in Morehead,
20 Kentucky. Another one would be Nick
21 Reeder in Milton, Wisconsin. And another
22 one would be Chris Terrell in south Utah.
23 And another one would be Dan Howard or

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1 Ryan Howard in Terra Bella, California.
2 Q. I tell you what, Mr. Stuart,
3 let's go off the record. I need to change
4 my tape. We will take a break for about
5 five minutes, and we will finish up in the
6 next hour, okay?
7 A. All right.
8 MR. ROBERSON: Let's go off
9 the record. Going off the record at 1:52.
10 (Whereupon, a break was had
11 from 1:52 p.m. until 2:01 p.m.)
12 MR. ROBERSON: This is tape
13 two of the videotape deposition of Joe
14 Stuart.
15 Q. (BY MR. ROBERSON:) Mr.
16 Stuart, we are back on the record at 2:00.
17 (Whereupon, Plaintiff's
18 Exhibit 14 was marked for
19 identification.)
20 Q. I'm going to show you what I
21 have marked as Exhibit 14. This is the
22 commission statement for 2007 for Terry
23 Watson; do you see that?

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1 And is it true that his draw
2 has exceeded his commissions earned for
3 2007?
4 A. Yes, sir, that's what this
5 looks like.
6 Q. And so he owes you money,
7 according to this document?
8 A. According to this document, he
9 owes the company money, but he is not the
10 only one that has been in this situation.
11 And we have never collected this money and
12 he has continued to be on the payroll.
13 And we are not going to ask him for this
14 money back even before -- without any kind
15 of lawsuit. And we have some other people
16 in the same boat.
17 Q. Now, when Terry came to see
18 you in February of 2006, that was a new
19 season, right? The spring season of 2006,
20 correct?
21 A. Beginning a new season, yes,
22 sir.
23 Q. When do salesmen report to

16 (Pages 61 to 64)

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1 work normally?
2 A. Depending on the geographic
3 place that they are in. The northern
4 route may not go until the middle of
5 March, the southern route may go middle of
6 January.
7 Q. Well, did Terry Watson have a
8 route in February?
9 A. That's when we -- when I
10 assigned him a route. Actually, let me
11 get away from that. That's when I tried
12 to create a route for him down in
13 Donaldsonville, Louisiana.
14 Q. Okay. Well, you'd known since
15 2005 after talking to Mr. Alley that he
16 wasn't going back to Bells, Tennessee, so
17 what route did you assign him before then?
18 A. There wasn't a route available
19 before then. I had to try to create him
20 one.
21 Q. Well, Les Braun, he was
22 working for you in 2005, wasn't he?
23 A. Yes, sir.

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1 Q. He had to come from a route to
2 take Terry's route, correct?
3 A. And Adam had already hired
4 somebody to replace Les Braun, who was
5 incidentally about sixty years old.
6 Q. Well, why would you hire
7 somebody before -- if you were going to
8 retain the employee, why would you hire
9 somebody to replace them before you found
10 him a route, sir?
11 A. I didn't hire him. Mr. Alley
12 -- Mr. Alley hired this man to replace Les
13 Braun in southern Illinois.
14 Q. And when was he hired --
15 A. This -- I don't know exactly.
16 This man was about sixty years old that he
17 hired.
18 Q. I see. What's his name?
19 A. I don't know. We can look it
20 up.
21 Q. Well, so Terry Watson didn't
22 have a job when he came to see you, did
23 he?

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1 A. Oh, I was going to get him a
2 job.
3 Q. Well, it's a good thing he
4 made a complaint of age discrimination,
5 then --
6 MR. GERHARDT: Object to the
7 form.
8 Q. -- correct?
9 A. No, sir, that's not correct.
10 Q. Well, after he made his
11 complaint, you created him a job, correct?
12 MR. GERHARDT: Object to the
13 form.
14 A. No, sir, that's not the way it
15 was.
16 Q. Had you created him a job
17 before he made the complaint?
18 A. When he came to see me in
19 February, that is not the same visit that
20 evidently he came to see Tate with. I
21 never saw Big Terry when he came to see
22 Tate, nor did I receive any letter or
23 anything about that.

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1 Q. Are y'all both in the same
2 location?
3 A. I travel a lot. I'm in and
4 out of my office two and three days every
5 week, so --
6 Q. Is Tate's office in Union
7 Springs?
8 A. Yes, sir.
9 Q. Is your office in Union
10 Springs?
11 A. Yes, sir.
12 Q. So y'all are -- are they both
13 on the same piece of property?
14 A. Yes, sir.
15 Q. You were here for Terry
16 Watson's deposition, correct?
17 A. Yes, sir.
18 Q. Why?
19 A. I hadn't seen Terry in two
20 years, I wanted a chance to see him again.
21 Q. Do you remember cursing him
22 and storming out of the deposition?
23 A. I did -- I did not curse

17 (Pages 65 to 68)

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1 Terry.
2 MR. GERHARDT: Object to the
3 form.
4 A. I cursed, but I didn't curse
5 at Terry.
6 Q. Okay, I apologize. You said
7 you didn't have to listen to this BS,
8 slammed your book and walked out, correct?
9 A. That's correct. I wasn't -- I
10 wasn't under oath, I wasn't required to be
11 here, so I left.
12 Q. What upset you?
13 A. I wasn't really upset.
14 Q. Do you normally behave that
15 way?
16 A. No, sir.
17 Q. Well, what angered you?
18 A. I don't think I was all that
19 angry, to tell you the truth. I think I
20 acted more angry than what I really was.
21 Q. It was --
22 A. I apologize -- I apologize for
23 acting angry.

1 Q. And who was that complaint
2 from?
3 A. I don't know. But Mr. Hall
4 has that, I don't have that.
5 Q. When you owned your own
6 company, did you sell plants? Were you a
7 salesman?
8 A. Yes, sir.
9 Q. You had a route?
10 A. I ran a route most of the
11 time.
12 Q. Where was it?
13 A. I was sort of a fill-in man.
14 If he wasn't doing his job, then I went
15 and ran the route and tried to catch it
16 up. I moved from route to route. That's
17 why I knew all of my accounts and all of
18 my customers on a personal basis.
19 Q. Has anybody ever called you
20 and said we are out of flowers?
21 A. Has anybody ever called me and
22 said we are out of plants or something?
23 Q. Yeah.

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1 Q. It was just a show?
2 MR. GERHARDT: Object to the
3 form.
4 A. I wouldn't say that.
5 Q. Just trying to impress me?
6 A. No, I wasn't trying to impress
7 you.
8 Q. It didn't work.
9 A. If I was trying to do that,
10 I'm sure it didn't.
11 Q. Well, have you had any
12 conversations later with Terry's station
13 manager about his job performance?
14 A. No, sir.
15 Q. Have you had any complaints
16 about Terry Watson's job performance
17 lately from any source, customers or
18 anybody?
19 A. Could you clarify lately?
20 Q. Well, when was the last time
21 you got one?
22 A. I would say the latter part of
23 March or maybe first of April.

1 A. Oh, yes, sir.
2 Q. That happens sometimes?
3 A. We would hope something like
4 that happens. If nobody calls you and
5 tells you we are out --
6 Q. That's a good thing?
7 A. -- then that means we are not
8 selling nothing.
9 Q. Exactly.
10 A. But --
11 Q. Sometimes, and it's a good
12 thing, your customers can sell more than
13 anyone would reasonably anticipate, can't
14 they?
15 A. Reword that for me.
16 Q. Well, there is a difference
17 between a customer calling you and saying
18 I ain't seen my salesman in six weeks and
19 a customer calling you and saying we are
20 out of plants, we are out of some
21 vegetable or something?
22 MR. GERHARDT: Object to the
23 form.

18 (Pages 69 to 72)

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1 Q. There is a difference in those
2 two complaints, isn't there?
3 A. To a certain extent there is a
4 difference in those two complaints.
5 Q. I mean, you can sell out of
6 plants in three days, it may take you
7 longer than three days to work your route,
8 to visit all of your stores on your route,
9 right?
10 A. We try not to have any route
11 that takes longer than three days. We try
12 to deliver our plants in two-day periods.
13 Q. You mean you can work your
14 route from one end to the other in two
15 days?
16 A. If we rerouted our routes and
17 properly assigned the territory, and
18 that's why we redo routes, where we can
19 try to work it in two days. Some people
20 can work a route in a day.
21 Q. The shorter your route, the
22 easier it is to work, right?
23 A. And the longer you take

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1 loading and the longer you take, you know,
2 working the stores, and if you sleep in
3 front of the stores and take up a lot of
4 time, then the longer the -- the shorter
5 the shelf life, so less sales, yes, sir.
6 Q. Well, Mr. Stuart, I don't get
7 to talk to you but this one occasion, and
8 I don't want you to come to court and tell
9 me something I haven't heard. So do you
10 know anything else that's negative about
11 Terry Watson that you haven't told me
12 about today?
13 A. Well, just like any people,
14 I'm sure there are some negative things
15 about Mr. Watson I'm leaving out, but we
16 will let that ride for today. I will save
17 that for court.
18 Q. Well, that's what I'm trying
19 to get you not to do, save it for court.
20 A. I can't remember anything
21 right now, though.
22 Q. All right. Well, do you know
23 of anything positive about Terry Watson?

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1 He has been working for you for thirty
2 years. Can you say anything good about
3 him?
4 A. He is a pleasant, likable
5 person. And he was a hell of a nose guard
6 on the football team.
7 Q. Did he play at Troy State?
8 A. (Nodding head affirmatively.)
9 He couldn't go laterally, but you couldn't
10 move him out of the middle either.
11 Q. Let's say that Terry continues
12 to improve his sales performance and let's
13 say he doesn't have any complaints from
14 customers in the future; how long can
15 Terry work for y'all as a route salesman?
16 Do you have any mandatory retirement age?
17 A. No, sir. Like I say, we have
18 a salesman on the route now that's
19 seventy-one. If there is improvement in
20 Terry, I would say Big Terry can work
21 until he wants to retire. I can't
22 guarantee him what route he will be on,
23 but I can guarantee him a job.

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1 Q. Well, are you trying to find
2 him a better route --
3 A. Yes, sir, always looking --
4 Q. -- shorter route?
5 A. Always looking for something
6 to help him out.
7 MR. ROBERSON: All right. I
8 don't believe I have any further
9 questions, Mr. Stuart.
10 Do you have any questions?
11 MR. GERHARDT: I don't have
12 any.
13 MR. ROBERSON: All right.
14 That will conclude the deposition of Mr.
15 Stuart at 2:12.
16 I told you I would get you out
17 of here in time.
18 A. All right.
19 MR. ROBERSON: Off the record.
20
21 (Whereupon, the deposition of
22 Joe Stuart was concluded at
23 2:12 p.m. on the 23rd day of

19 (Pages 73 to 76)

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FURTHER THE DEPONENT SAITH NOT

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CERTIFICATE

STATE OF ALABAMA)
JEFFERSON COUNTY)

I hereby certify that the
above and foregoing deposition was taken
down by me in stenotypy, and the questions
and answers thereto were reduced to
typewriting under my supervision, and that
the foregoing represents a true and
correct transcript of the deposition given
by said witness upon said hearing.

I further certify that I am
neither of counsel nor of kin to the
parties to the action, nor am I in anywise
interested in the result of said cause.

COMMISSIONER - NOTARY PUBLIC
ACCR LICENSE NO. 116

20 (Pages 77 to 78)

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ARTHUR T. WATSON
ALABAMA FARMERS COOPERATIVE, INC., ET AL.

JOE STUART
May 23, 2008

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**DEFENDANT ALABAMA FARMERS COOPERATIVE,
INC. D/B/A BONNIE PLANT FARMS**

EX. 6

TO EVIDENTIARY SUBMISSION

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION

CASE NUMBER: CV 2:07 520-WHA

ARTHUR T. WATSON,

Plaintiff,

vs.

ALABAMA FARMERS COOPERATIVE,

INC., d/b/a BONNIE PLANT FARMS,

Defendant.

S T I P U L A T I O N

IT IS STIPULATED AND AGREED, by
and between the parties through their
respective counsel, that the deposition of
ARTHUR T. WATSON may be taken before Michelle
L. Parvin, Commissioner, at the offices of
Burr & Forman, 3100 Wachovia Tower, 420 20th
Street North, Birmingham, Alabama, 35203, on
the 25th day of March, 2008.

IT IS FURTHER STIPULATED AND

FREEDOM COURT REPORTING

Page 2

1 AGREED that the signature to and the reading
2 of the deposition by the witness is waived,
3 the deposition to have the same force and
4 effect as if full compliance had been had
5 with all laws and rules of Court relating to
6 the taking of depositions.

7 IT IS FURTHER STIPULATED AND
8 AGREED that it shall not be necessary for any
9 objections to be made by counsel to any
10 questions, except as to form or leading
11 questions, and that counsel for the parties
12 may make objections and assign grounds at the
13 time of trial, or at the time said deposition
14 is offered in evidence, or prior thereto.

15 IT IS FURTHER STIPULATED AND
16 AGREED that notice of filing of the
17 deposition by the Commissioner is waived.
18
19
20
21
22
23

Page 4

1 Driver's Helper-Employment Contract

2 Defendant's 7 137

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4 Defendant's 8 141

5 Charge of Discrimination

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7 Tax records for 2003, 2004, and 2005

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1 IN THE UNITED STATES DISTRICT COURT FOR
2 THE NORTHERN DISTRICT OF ALABAMA
3 NORTHERN DIVISION

4
5 CASE NUMBER: CV 2:07 520-WHA
6

7 ARTHUR T. WATSON,

8 Plaintiff,

9 vs.

10 ALABAMA FARMERS COOPERATIVE,
11 INC., d/b/a BONNIE PLANT FARMS,
12 Defendant.

13 BEFORE:

14 Michelle L. Parvin, Certified

15 Court Reporter

16 APPEARANCES:

17 JERRY D. ROBERSON, Attorney at
18 Law, 3765 Kinross Drive, P. O. Box 380487,
19 Birmingham, Alabama, 35238-0487, appearing on
20 behalf of the Plaintiff.

21 BURR & FORMAN by Mr. Dent M.
22 Morton, 420 20th Street North, Suite 3400,
23 Birmingham, Alabama, 35203, appearing on

2 (Pages 2 to 5)

FREEDOM COURT REPORTING

Page 6	Page 8
<p>1 behalf of the Defendant.</p> <p>2</p> <p>3 Also Present:</p> <p>4 Joe Stewart</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>	<p>1 deposited before? Have you ever given a</p> <p>2 deposition before?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Okay. What kind of case did you</p> <p>5 give a deposition in?</p> <p>6 A. Automobile -- I had a wreck on a</p> <p>7 Bonnie truck.</p> <p>8 Q. Okay. Well, I just want to tell</p> <p>9 you a few rules for depositions so we try to</p> <p>10 stay on the same sheet of music, okay? First</p> <p>11 of all, if I ask you a question and you don't</p> <p>12 understand it, please let me know. I'll try</p> <p>13 to explain it, rephrase it, or whatever so</p> <p>14 we're on the same sheet of music. If you</p> <p>15 don't tell me that you don't understand my</p> <p>16 question, then, I'm going to assume you</p> <p>17 understand it, and I'm going to assume that</p> <p>18 your answer is responsive to the question,</p> <p>19 okay?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Let's try not to talk on top of</p> <p>22 each other during the deposition. Try to let</p> <p>23 me finish my questions before you start your</p>
Page 7	Page 9
<p>1 I, Michelle L. Parvin, a Court</p> <p>2 Reporter of Birmingham, Alabama, acting as</p> <p>3 Commissioner, certify that on this date, as</p> <p>4 provided by the Federal Rules of Civil</p> <p>5 Procedure of the United States District</p> <p>6 Court, and the foregoing stipulation of</p> <p>7 counsel, there came before me at 3100</p> <p>8 Wachovia Tower, 420 20th Street North,</p> <p>9 Birmingham, Alabama, 35203, beginning at 1:05</p> <p>10 p.m., ARTHUR T. WATSON, witness in the above</p> <p>11 cause, for oral examination, whereupon the</p> <p>12 following proceedings were had:</p> <p>13</p> <p>14 ARTHUR T. WATSON,</p> <p>15 being first duly sworn, was examined and</p> <p>16 testified as follows:</p> <p>17</p> <p>18 EXAMINATION BY MR. MORTON:</p> <p>19</p> <p>20 Q. Mr. Watson, would you state your</p> <p>21 full name for the record, please?</p> <p>22 A. Arthur Terrell Watson.</p> <p>23 Q. Mr. Watson, have you ever been</p>	<p>1 answers. I'll try to let you finish your</p> <p>2 answers before I start with another question,</p> <p>3 okay?</p> <p>4 A. Yes, sir.</p> <p>5 Q. It is difficult for her to take</p> <p>6 down a head nod or an uh-huh or an huh-uh.</p> <p>7 So, please give your answers out loud</p> <p>8 verbally, all right?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Mr. Roberson was saying a second</p> <p>11 ago, you may need some breaks, that's fine.</p> <p>12 We'll probably need some breaks, too. But if</p> <p>13 at any time you need a break, please let me</p> <p>14 know and we'll accommodate you, all right?</p> <p>15 What's your address, Mr. Watson?</p> <p>16 A. [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 Q. All right. And is that your</p> <p>19 permanent residence?</p> <p>20 A. No, sir.</p> <p>21 Q. Where's your permanent residence?</p> <p>22 A. [REDACTED]</p> <p>23 [REDACTED]</p>

3 (Pages 6 to 9)

FREEDOM COURT REPORTING

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1 Q. [REDACTED]
 2 A. [REDACTED]
 3 one word.
 4 Q. [REDACTED]
 5 A. [REDACTED]
 6 Q. Where is [REDACTED]
 7 A. It's about halfway between
 8 Luverne and Troy. It's eighteen miles west
 9 of Troy.
 10 Q. How long have you lived there?
 11 A. Off and on since probably the mid
 12 '70s.
 13 Q. How long have you been there this
 14 time? How long has that been your permanent
 15 address this time around?
 16 A. Well, you know, I go work and be
 17 gone six months, three months, four months at
 18 a time. But that's been my permanent --
 19 that's been my address for probably forty
 20 years.
 21 Q. All right. What's your
 22 educational background?
 23 A. I got a B.S. Degree from Troy

Page 11

1 State University.
 2 Q. What'd you get your degree in?
 3 A. Got a Bachelor of Science in
 4 general business.
 5 Q. And when was that?
 6 A. I probably got my degree in the
 7 early '70s, just guessing.
 8 Q. All right. Do you have any
 9 other -- any other education, any other
 10 degrees?
 11 A. No, sir.
 12 Q. Now, when did you go to work for
 13 Alabama Farmers Cooperative first?
 14 A. When they bought Joe Stewart and
 15 Company out.
 16 Q. And Joe Stewart would be the
 17 gentleman sitting to my left here?
 18 A. Yes, sir.
 19 Q. All right. How long did you work
 20 for Mr. Stewart before Alabama Farmers bought
 21 his company?
 22 A. I would guess seven years.
 23 Q. And what type of work did you do

Page 12

1 for them?
 2 A. Route salesman.
 3 Q. Was your work about the same kind
 4 of work that you have since done for --
 5 A. Yes.
 6 Q. -- Alabama Farmers?
 7 MR. ROBERSON: Dent, I guess
 8 everybody knows but me, but when was that
 9 purchase; do you know?
 10 MR. MORTON: Not off the top of
 11 my head.
 12 MR. STEWART: 1976. I think
 13 that's right.
 14 MR. ROBERSON: I'm sorry. I'm
 15 just trying to get a point of reference here.
 16 Q. (BY MR. MORTON) What do you have
 17 in front of you there, Mr. Watson?
 18 A. I've just got a notebook on some
 19 things that I did on my route. I just wrote
 20 down a few notes that I thought I might need
 21 today that I discussed with Jerry. And that
 22 is an example of the payment plan that Bonnie
 23 offers to settle it.

Page 13

1 Q. Well, I don't mind you referring
 2 to notes if you want to during your
 3 deposition.
 4 MR. MORTON: But if he does that,
 5 I'm entitled to a copy of them.
 6 MR. ROBERSON: I was going to
 7 make them an exhibit. So, I mean, if you
 8 want to make a copy now, that would be fine.
 9 MR. MORTON: Yeah, why don't I
 10 get somebody in here to be copying them, and
 11 we can --
 12 MR. ROBERSON: Sure.
 13 MR. MORTON: -- proceed with the
 14 deposition.
 15
 16 (Whereupon, a discussion was held
 17 off the record.)
 18
 19 Q. (BY MR. MORTON) Where were you
 20 working for Joe Stewart and Company, Mr.
 21 Watson?
 22 A. New Summerfield, Texas.
 23 Q. And where is New Summerfield,

4 (Pages 10 to 13)

FREEDOM COURT REPORTING

Page 14

1 Texas?

2 A. 'It's about ninety miles south of
3 Shreveport.

4 Q. Is it in extreme east Texas?

5 A. Yes, sir, extreme Texas, and it's
6 probably sixty miles south of Tyler, Texas.

7 THE COURT REPORTER: Can you
8 speak up just a little bit, please?

9 THE WITNESS: Yes, ma'am.

10 Q. When you were working there,
11 where was your physical route? Was it in
12 Texas or was it in Louisiana or did it vary
13 from time to time?

14 A. I started in Texas and worked
15 stores in Texas and Louisiana.

16 Q. All right. At the time that you
17 went to work for Bonnie Plant Farm, Alabama
18 Farmers Cooperative, what was your first
19 route with Bonnie?

20 A. It was the same route I had with
21 Joe Stewart.

22 Q. And that was in both Texas and
23 Louisiana?

Page 15

1 A. Yes, sir.

2 Q. And how long did you continue on
3 that route?

4 A. I would guess I stayed on that
5 same route probably fourteen years, something
6 in that neighborhood.

7 Q. Did the route change materially
8 during that time?

9 A. Yes, sir, there were great
10 changes in the route. When I started, we
11 worked mostly independent stores. We had to
12 build our own route. We had to go to the
13 store and explain our program to them,
14 deliver the plants to them. And we worked no
15 chain stores at all.

16 MR. MORTON: Let's go off the
17 record a second.

18 (Whereupon, a discussion was held
19 off the record.)

20 Q. (BY MR. MORTON) All right. And
21 the changes in your route, then, were that
22
23

Page 16

1 you went to being heavily dependent on large
2 stores like Home Depot and Lowe's and places
3 like that?

4 A. Well, that was one of the big
5 changes. We still worked the independents,
6 too.

7 Q. Okay.

8 A. One of the big changes was they
9 add on chain stores.

10 Q. All right. Now, after your
11 fourteen or so years on the route out of
12 Summerfield, Texas, did your route change?

13 A. Yes, sir. It changed many times
14 during the fourteen years that I was on that
15 route.

16 Q. Okay. And you mean the actual
17 physical location that you stopped?

18 A. The actual physical location that
19 I stopped changed many times.

20 Q. Then, from the route out of
21 Summerfield, Texas, where did you go? Did
22 you go to Bells, Tennessee?

23 A. Went to Bells, Tennessee.

Page 17

1 Q. And did you go to Bells,
2 Tennessee -- did you agree to swap routes
3 with somebody --

4 A. Yes, sir.

5 Q. -- to go to Bells?

6 A. Yes, sir, we discussed that it'd
7 probably be a lot easier on me to run a
8 shorter route with fewer miles and fewer
9 stops on it.

10 Q. And who did you have that
11 conversation with?

12 A. Butch Stewart.

13 Q. And who is Butch Stewart?

14 A. He's the routeman that I swapped
15 routes with that's been a good plant man for
16 a long time.

17 Q. Okay. And was it your idea to
18 change?

19 A. Yes, sir, it was mine and his
20 consensually. He thought that he'd be better
21 off working more. Out in Texas, he worked in
22 the fall and worked a big fall route. And he
23 thought it would be good for him to be able

5 (Pages 14 to 17)

FREEDOM COURT REPORTING

Page 18

1 to work rather than be off during those
2 times.

3 Q. All right. And was part of the
4 idea of your going to Bells that you would
5 not run -- not have to run a fall route?

6 A. Yes, sir, I was planning on
7 having knee surgery. I had a knee
8 replacement. And I had both feet operated
9 on.

10 Q. And did you intend for the change
11 to be permanent?

12 A. Yes, sir.

13 Q. Now, did anybody approve y'all's
14 route change as far as you know?

15 A. Yes, sir.

16 Q. Who approved it?

17 A. Had to approve it. Joe Stewart
18 had to approve it for it to take place.

19 Q. Did you have any discussions with
20 Mr. Stewart about it?

21 A. Yes, sir.

22 Q. And what discussions did you have
23 with Mr. Stewart about it?

Page 19

1 A. He just agreed to it. He never
2 had a big conversation about it.

3 Q. Do you remember anything in
4 particular that he told you in connection
5 with the change in routes?

6 A. No, sir, I don't.

7 Q. All right. Now, how old were you
8 at that time, Mr. Watson?

9 A. I must have been fifty-nine or
10 fifty-eight.

11 Q. By the way, how old are you now?

12 A. I'm sixty-three. I was born
13 [REDACTED]

14 Q. Now, why did you want a shorter
15 route with fewer miles and fewer stops?

16 A. Well, my knee had wore out, and
17 that's the reason you replace them. I had
18 bone spurs in my feet that I had removed.
19 And the hours and time in those trucks are
20 hard on your body.

21 Q. You say the hours and time in the
22 trucks are hard on your body?

23 A. Yes, sir. You hurt in places you

Page 20

1 didn't know you had. And that's even younger
2 people.

3 Q. Do you remember who approached
4 whom as between you and Butch about this swap
5 originally?

6 A. I don't even remember how the
7 conversation came up. We talked a lot and we
8 visit a lot. And we just started talking
9 about it one day. And he thought it would be
10 a good thing, and I thought it would be a
11 good thing.

12 Q. Now, you told me that you talked
13 to Joe and that Joe approved it, but you
14 don't remember anything specific about that
15 conversation?

16 A. No, sir.

17 Q. Did you have any conversations
18 with anybody else at the management level
19 about that swap?

20 A. Adam Alley and Bill Rainer.

21 Q. All right. Now, for the record,
22 who is Adam Alley?

23 A. Adam Alley is the station manager

Page 21

1 in Bells, Tennessee.

2 Q. And what conversations did you
3 have with Mr. Alley about your swapping
4 routes with Mr. Stewart?

5 A. I told him that I'd like to come
6 up there and work with him and that I would
7 need a truck with an air ride seat to help
8 take some of the road bumps off of it.

9 Q. Did you say an air ride seat?

10 A. Yes, sir.

11 (Whereupon, a discussion was held
12 off the record.)
13

14 Q. (BY MR. MORTON) All right. Now,
15 had you had an air ride seat in --

16 A. Yes, sir.

17 Q. -- Texas?

18 A. Yes, it's a common seat in a
19 truck. Just some trucks didn't have them in
20 all models. Some trucks have air ride
21 suspensions and some trucks have other type
22 of suspension. And now, it's just a common
23

6 (Pages 18 to 21)

FREEDOM COURT REPORTING

Page 22

1 suspension to have air ride suspension. But
2 you could have air ride suspension on your
3 truck and not have an air ride seat for some
4 reason.

5 Q. All right.

6 A. It was just the seat that they
7 happened to put in the truck when they
8 manufactured it.

9 Q. All right. And what did Mr.
10 Alley say when you told him you wanted to
11 come work there?

12 A. He agreed. He thought it might
13 be a good swap.

14 Q. And did he give you a truck with
15 an air ride seat?

16 A. Yes, sir. But, then, he was --
17 the next year, I went up there, he decided he
18 wanted somebody else to have that truck with
19 the air ride seat and that he'd like for me
20 to have one of the older trucks that didn't
21 have an air ride seat in it. So, a younger
22 person could have a nice truck with an air
23 ride seat. They probably --

Page 23

1 Q. All right. Well, the truck he
2 gave you the first year, you said it had an
3 air ride seat. Did it have an air ride
4 suspension, too?

5 A. Yes, sir.

6 Q. All right. You told me a minute
7 ago that you had a knee replaced, that you
8 had both your feet operated on; is that
9 correct?

10 A. Yes, sir.

11 Q. When did you have the knee
12 replaced?

13 A. I think it was in the off season
14 of the '96 season, but that would be a guess.

15 Q. All right. So, that was long
16 before you negotiated to switch to Bells,
17 right?

18 A. Oh, no, sir. That was after I
19 was at -- that must have been 2006.

20 MR. ROBERSON: 2005, wasn't it?

21 THE WITNESS: 2005?

22 MR. ROBERSON: The fall of 2005?

23 A. But I'm sure that's in, you know,

Page 24

1 the medical records everywhere. And I'm sure
2 you probably have that.

3 Q. (BY MR. MORTON) All right. So,
4 you had the knee replaced in the off season.
5 Would that be after your first year at Bells
6 or before?

7 A. After.

8 Q. All right. And did you also have
9 your feet operated on during that same off
10 season?

11 A. That same off season.

12 Q. Again, it'd be easier on her if
13 you'll let me finish before you start your
14 answer, okay?

15 A. (Witness nods head.)

16 Q. So, that was surgery on both feet
17 to remove bone spurs?

18 A. Yes, sir.

19 Q. And was your knee replacement and
20 your surgery on your feet covered by the
21 insurance that you have through Alabama
22 Farmers?

23 A. Yes, sir.

Page 25

1 Q. Now, the season -- the spring
2 season for Alabama Farmers in this part of
3 the country, the south part of the country,
4 starts what, the week after New Year's? Is
5 that typically when it starts?

6 A. It depends on what part of the
7 United States you're working. If you're
8 working out west, it starts in early January.
9 But the more east you come, the later it
10 starts. And the more north you go, the later
11 it starts.

12 Q. When did it start in Bells,
13 Tennessee, in 2006?

14 A. I usually went up in February.

15 Q. Did you report to work? Were you
16 supposed to report to work prior to that?

17 A. As a general rule, no. Whenever
18 they said come, I always went. When it
19 started getting time to go to work, I
20 prepared to go. And I never said, well, I'll
21 wait and come next week or the week after
22 that. I always tried to be there when they
23 said to be there.

7 (Pages 22 to 25)

FREEDOM COURT REPORTING

Page 26

1 Q. Okay. So, you worked in Bells,
2 Tennessee, starting the year after you had
3 your knee replacement and foot surgery; is
4 that right?
5 A. No, sir.
6 Q. Okay.
7 A. I worked the first year before I
8 had it.
9 Q. All right.
10 A. And the next year, I had it.
11 Q. You had it in the off season?
12 A. Yes, sir.
13 Q. All right. By the time you were
14 supposed to report to work in 2006, had your
15 doctor released you for full duty without
16 restriction?
17 A. Yes, sir.
18 Q. And when had he released you?
19 A. In January of that year.
20 Q. Okay. And did you go back to
21 work in Bells that year?
22 A. No, sir.
23 Q. So, you worked only one year in

Page 27

1 Bells, Tennessee?
2 A. I worked two years in Bells,
3 Tennessee.
4 Q. You worked two years in Bells,
5 Tennessee. Well, did you work one before and
6 one after --
7 A. No, sir.
8 Q. -- your surgery?
9 A. After my surgery, I never went
10 back to Bells.
11 Q. Okay. So, you worked two years
12 in Bells before your surgery?
13 A. Yes, sir.
14 Q. All right. Now, you started to
15 tell me about the truck that you got the
16 second year in Bells. What truck did you get
17 the second year in Bells?
18 A. I got the truck with that -- with
19 the -- that didn't have the air ride seat in
20 it where all the shock was taken in the seat.
21 Q. Did that truck have an air ride
22 suspension?
23 A. Yes, sir.

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1 Q. Your second year in Bells, were
2 you on a shorter route than you had been on
3 the previous year?
4 A. No, sir.
5 Q. Were you on a different route
6 than you had been on the previous year?
7 A. Yes, sir. I was on the same
8 route number, but some stores had been taken
9 off of it. It had fewer stores.
10 Q. All right. Did you talk to Mr.
11 Alley about the fact that your truck didn't
12 have an air ride seat?
13 A. Yes, sir.
14 Q. Tell me about that conversation.
15 Tell me what you said, tell me what he said.
16 A. He said, if you're going to work,
17 drive that truck.
18 Q. Did he give you any explanation
19 for why he had --
20 A. No explanation whatsoever --
21 Q. -- swapped -- switched the
22 trucks?
23 A. -- why he switched.

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1 (Whereupon, a discussion was held
2 off the record.)
3
4 Q. (BY MR. MORTON) Now, some of the
5 stores were taken off your route that second
6 year, weren't they --
7 A. Yes.
8 Q. -- because you had not been able
9 to get around to them --
10 A. No, sir.
11 Q. -- the first year?
12 A. No, sir. I had never been
13 told -- I had never been told that.
14 Q. Have you ever been told why
15 trucks were taken off your route --
16 A. No, sir.
17 Q. -- I mean, stops were taken off
18 your route?
19 A. No, I had never been told that.
20 Q. Did you ask?
21 A. I'm sure that I mentioned it on
22 occasion, but it -- they always changed
23 routes. And they said that they had changed

8 (Pages 26 to 29)

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1 those routes, and they gave somebody thirteen
2 stores to work in that area that year and
3 that they needed those to make out his
4 thirteen stores or twelve stores or whatever
5 it was.

6 Q. Okay. So, it's not uncommon for
7 routes to be changed --

8 A. No --

9 Q. -- is that right?

10 A. -- it's not uncommon for a route
11 to be changed.

12 Q. And did you have thirteen stores
13 on your route?

14 A. I had more than thirteen.

15 Q. You had more than thirteen?

16 A. (Witness nods head.)

17 Q. So, you had more than the person
18 who got the stores that were taken off your
19 route?

20 A. Yes, sir.

21 Q. Had you previously, prior to your
22 second year at Bells, driven a truck without
23 an air ride seat?

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1 A. I wouldn't think. I think I was
2 the only one that didn't have an air ride
3 seat, because I was probably the oldest
4 person working at that station. And that was
5 kind of the way to let them know.

6 Q. Well, can you testify under oath
7 that nobody else at that station had an air
8 ride seat?

9 A. No, sir, I couldn't.

10 Q. Can you testify under oath that
11 everybody else at that station did have an
12 air ride seat, other than you?

13 A. I couldn't testify to that, but
14 I --

15 Q. Now, when you worked with Mr.
16 Stewart before you went to work for Bonnie,
17 you never had an air ride seat back then, did
18 you?

19 A. I drove a Mack truck with Joe
20 Stewart about the whole time I worked with
21 him. And that truck had good suspension on
22 it. It wasn't as -- I wasn't really thinking
23 about it as much at that time until I was

Page 31

1 A. No, sir.

2 Q. Never?

3 A. Not that I remember for a season.

4 Q. Was the same truck that you had
5 been driving at that station that second
6 year?

7 A. The first year, I drove a truck
8 with an air ride seat, then, the second year,
9 I didn't.

10 Q. I understand that. What I'm
11 asking you is, the truck you drove the first
12 year, was somebody else at this particular
13 station, the Bells, Tennessee, station,
14 driving that truck?

15 A. Yes, sir.

16 Q. Who was that?

17 A. I don't know who was driving the
18 truck. It wasn't really -- I just needed one
19 with an air ride seat and had requested one
20 and didn't get one.

21 Q. Were there other people at that
22 station who didn't have a truck with an air
23 ride seat, or do you know?

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1 younger and I was more able to work. And --
2 but I didn't have any problems at that time.

3 Q. Okay. But the answer to the
4 question is, you didn't have an air ride seat
5 when you worked with Mr. Stewart at his
6 company; is that right?

7 A. I don't know whether the seat was
8 air ride or not. I know I had a nice truck.

9 Q. Now, you said that that was --

10 A. And that --

11 Q. I'm sorry.

12 A. Go ahead. I --

13 Q. You said that that was when you
14 were younger and more able to work. Are you
15 not as able to work as you were then?

16 A. Oh, no, sir, I have aged. And
17 with age, you change and your abilities
18 change, your thoughts change.

19 Q. And the answer is, you're not as
20 able to work anymore as you were then?

21 A. No, sir.

22 Q. So, you're saying you can work
23 just as well now as you could then?

9 (Pages 30 to 33)

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1 A. No, sir. My answer is, no, I'm
2 not as able to work as I was then.
3 Q. Now, you said a few minutes ago
4 that you thought that maybe you had a truck
5 without an air ride seat your second year at
6 Bells because you were the oldest person
7 there?
8 A. Yes, sir.
9 Q. What makes you believe that?
10 A. I don't remember anybody else
11 even looking to see if they had an air ride
12 or not.
13 Q. Okay. You don't remember --
14 A. I was the only person that worked
15 there that it was important to to have an air
16 ride seat.
17 Q. When you say you don't remember
18 anybody else looking, you mean you don't
19 remember looking to see if anybody else had
20 an air ride seat?
21 A. That's right. I didn't look to
22 see what anybody else had. I knew what I
23 needed, and I asked for what I needed. And

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1 he didn't give it to me because of my age.
2 Q. Okay. What I'm trying to get at
3 is, why do you believe it was because of your
4 age?
5 A. Well, everybody else had what
6 they wanted.
7 Q. Well, tell me who else you know
8 of had an air ride seat.
9 A. Tony Brown, Johnny Roy Fendelson,
10 Les Branum, Brent Raider. I don't know
11 who -- Eric Rank.
12 Q. You're certain under oath that
13 all these people had air ride seats?
14 A. No, sir, you asked me a general
15 question, and that's just, in general, who
16 was there driving trucks.
17 Q. Okay. But you can't say
18 specifically that any one of those people had
19 an air ride seat, correct?
20 A. Oh, no, sir.
21 Q. All right. Any other reason that
22 you believe, Mr. Watson, that the fact that
23 you didn't have an air ride seat was due to

Page 36

1 your age?
2 A. I'll just say that they had to
3 have picked me out because of my age to be
4 sure that I didn't get a truck with an air
5 ride seat for me not to have one.
6 Q. All right. Well, you had had an
7 air ride seat the year before, correct?
8 A. Yes, sir.
9 Q. Why did you think one year made
10 that much difference, Mr. Watson?
11 A. I don't know. I don't know how
12 people think. I can't think for somebody
13 else.
14 Q. Okay. Have you told me all the
15 reasons you believe that the fact that you
16 didn't have an air ride seat your second year
17 at Bells was based on your age?
18 A. Yes, sir.
19 Q. And that would be that you
20 believe everybody else had what they wanted,
21 and you didn't get the air ride seat, and,
22 therefore, you think it must have been your
23 age because you were the oldest?

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1 A. Yes, sir, and I was the only one
2 that it was important to have one.
3 Q. Do you know whether any of the
4 other folks requested an air ride seat?
5 A. I have no idea.
6
7 (Whereupon, a discussion was held
8 off the record.)
9
10 Q. (BY MR. MORTON) Did you have any
11 discussions with anybody, other -- anybody in
12 a management position, other than Mr. Alley,
13 about the fact that you wanted, but did not
14 have, an air ride seat?
15 A. Yes, sir.
16 Q. Who did you talk to?
17 A. I called Joe, and I couldn't get
18 him on the phone. So, I discussed it with
19 Kyle. And they didn't appear to be
20 interested in it. So, I went to work just
21 like they said do.
22 Q. All right. What conversation did
23 you have with Kyle?

10 (Pages 34 to 37)

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1 A. I just told him that I had asked
2 Adam for an air ride seat when I went up
3 there. And he said he'd let me have a truck
4 with an air ride seat, and he didn't. And
5 I'd like to know if he could help me get one.
6 And he said he couldn't.

7 Q. Did you tell Kyle anything else?

8 A. That was all.

9 Q. Okay. Did you tell him
10 anything -- did you tell him that you thought
11 it was because of your age?

12 A. No, sir.

13 Q. Did you have any disputes with
14 Mr. Alley during your first year at Bells?

15 A. Not that I know of.

16 Q. During your second year at
17 Bells -- well, one of the reasons you had
18 gone up to Bells, as I understand it, is you
19 wanted to get a shorter route than what you
20 had in Texas, correct?

21 A. Correct.

22 Q. During your second year at Bells,
23 did you have the shortest route out of that

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1 station?

2 A. I don't know. I had one of the
3 shorter ones. I wouldn't -- I mean, compared
4 to what I was used to driving, it was --

5 Q. It was what?

6 A. Shorter.

7 Q. Other than talking to Mr. Alley
8 on one occasion that you described to me
9 about not having an air ride seat the second
10 year, did you have any discussions with him
11 on that subject?

12 A. Not that I remember.

13 Q. Okay. Other than talking to Kyle
14 when you tried to get in touch with Joe here
15 about the issue, did you talk to anybody else
16 in a management position about that issue,
17 the fact that you didn't have an air ride
18 seat --

19 A. No, sir.

20 Q. -- the second year at Bells?

21 A. No, sir.

22 Q. Did you have any disputes with
23 Mr. Alley during your second year at Bells?

1 A. No, sir.

2 Q. During your first year at Bells,
3 did Mr. Alley in any way criticize your
4 performance?

5 A. No, sir.

6 Q. At the end of your first year at
7 Bells, or during the off season between your
8 first and second years, did he in any way
9 criticize your performance?

10 A. No, sir, he never said anything
11 to me. If he did, he said it to somebody
12 else.

13 Q. Did anybody else criticize your
14 performance during your first year at Bells
15 or during the off season afterwards?

16 A. No, sir.

17 Q. Did you talk with any of your co-
18 employees about the fact that you didn't have
19 an air ride seat your second year at Bells?

20 A. I imagine I said something around
21 somebody about it. But when you're in the
22 plant business, you don't have time to cry
23 long about anything. You have to go on and

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1 attend to the business. And I went on, and I
2 attended to the business.

3 Q. Do you remember anybody or any of
4 your co-workers saying anything to you about
5 that fact, that you didn't have an air ride
6 seat?

7 A. I don't recall anything today.

8 Q. Now, did you have helpers your
9 first year at Bells?

10 A. Sir?

11 Q. Did you have helpers your first
12 year at Bells?

13 A. Yes, I've had helpers everywhere
14 I've worked.

15 Q. How many did you have?

16 A. One to two.

17 Q. At Bells, you had one to two?

18 A. Yes, sir.

19 Q. All right. When did you have
20 one?

21 A. In the early part of the season
22 when things were slower and you had time to
23 get around and do. When I was putting up

11 (Pages 38 to 41)

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1 racks or something, I would take two. When
2 it got in the heat of the season, we were
3 hauling the plants real fast, I'd try to take
4 two. And in the end of the season, I'd run
5 one. And in the end of the season when we
6 had to get up racks, I'd run with two.

7 Q. All right. After your second
8 year at Bells, where -- okay. During your
9 second year at Bells, did Mr. Alley in any
10 way criticize your performance?

11 A. No, sir. He saw increases, big.

12 Q. And --

13 A. He saw good sales.

14 Q. And after the season, did he in
15 any way criticize your performance?

16 A. Not to me.

17 Q. Do you know if he criticized it
18 to anybody else?

19 A. Hearsay, I've heard people say
20 things, but he didn't say anything to me.

21 Q. What did you hear?

22 A. I was -- I live with a guy that's
23 got two stiff knees. Went to get knee

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1 replacement surgery and had an infection got
2 in there. And they put pins in his legs.
3 And he's in his seventies. And he asked me
4 to take him to visit his brothers in Mobile.
5 And Joe called me and told me that he wanted
6 a meeting with him on a Tuesday. I remember
7 it was in November, because it was election
8 time. I told him I'd be back and come over
9 there.

10 Well, that Tuesday morning,
11 voting, Sam asked me if I'd take him to vote
12 before I left. So, we got down there when
13 the polls opened to take him to vote. And
14 Joe called me and wanted to know why I wasn't
15 over there, and I told him. And then, I came
16 on to Union Springs. And that was when he
17 told me that I wouldn't be going back to
18 Bells.

19 Q. All right. Let's back up just a
20 second. The guy with the two stiff knees,
21 did he work for Bonnie?

22 A. No, sir, he worked for the bank.

23 I was coming home and -- but

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1 lived in a trailer out in the woods, an old
2 trailer had burned up. I mean, a tree had
3 fell down on it. It hadn't burned up. And
4 he said, why don't you move in with me and
5 help me get started. And I just moved in
6 with him. His wife had died when his
7 children was young. And my children were
8 raised up there with them. So, I moved in
9 with him. Been living with him ever since.

10 Q. What's his name?

11 A. Sam Goodwin.

12 Q. Goodwin?

13 A. G double O d-w-i-n.

14 Q. All right. So, you went to Union
15 Springs, and you met with Joe. And Joe told
16 you you weren't going back to Bells, or
17 wouldn't be going back to Bells?

18 A. Yes, sir.

19 Q. Did he tell you why?

20 A. No, sir. He said it just didn't
21 work out.

22 Q. Did you ask for any other
23 explanation?

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1 A. No, sir.

2 Q. What did you say to Joe?

3 A. I told Joe that I needed to work.
4 That if I sat down, I wouldn't never get up.
5 And he said that he'd help me fill out my
6 disability papers. And then, he said, no,
7 he'd get his secretary to do it.

8 Q. And what did you say to that?

9 A. I said, well, probably age is --
10 has a factor in this decision. My age
11 probably has a factor in this decision.

12 Q. You said that to Joe?

13 A. Yes, sir.

14 Q. What did Joe say?

15 A. At the time, I don't remember the
16 response, but he called me back in later and
17 told me that he didn't want to hear anymore
18 about this age thing. That they had people
19 working there that was older than me and that
20 they were hiring people that was older than
21 me.

22 Q. Were those statements true?

23 A. I don't know. I hadn't seen

12 (Pages 42 to 45)

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1 anybody older than me that they hired.
 2 Q. When he called you back in, when
 3 was that?
 4 A. I don't know. About a week or
 5 two after he told me that I wasn't going back
 6 to Bells.
 7 Q. When he called you back in, did
 8 he tell you to find you someplace to work?
 9 A. He told me that he'd help me get
 10 my disability.
 11 Q. Right. Did you agree to that?
 12 A. No, sir.
 13 Q. What'd you tell him?
 14 A. I told him I didn't think I could
 15 qualify.
 16 Q. What did he say?
 17 A. He said, well, he'd see what he
 18 could do. Something to that order.
 19 Q. And did he ultimately find you
 20 someplace to go work?
 21 A. Yes, sir. He sent me to
 22 Donaldsonville, Louisiana.
 23 Q. And who was your station manager

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1 at Donaldsonville?
 2 A. Charlie Trussell.
 3 Q. Is Charlie any kin to Tim
 4 Trussell?
 5 A. I think they're brothers.
 6 Q. In fact, Charlie Trussell's
 7 sixty-six years old, isn't he?
 8 A. I know he's a few years older
 9 than I am. I wouldn't know exactly how old
 10 he is.
 11 Q. And, in fact, Joe is older than
 12 you, is he not?
 13 A. Yes.
 14 Q. Now, when did you find out you
 15 were going to Donaldsonville, Louisiana?
 16 A. I would guess it was out in
 17 February. I wouldn't -- I mean, I don't
 18 remember.
 19 MR. ROBERSON: February of '06?
 20 Q. (BY MR. MORTON) Is that right?
 21 A. February of '06.
 22 Q. Now, did you tell me everything
 23 you can remember about the conversations that

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1 you had with Joe here in which he calls you
 2 to Union Springs and told you you wouldn't be
 3 going back to Bells, and you said you thought
 4 age had something to do with it, and he told
 5 you he'd fill out your disability papers,
 6 then, you told me he called you back and told
 7 you he didn't want to hear anything else
 8 about age? Have you told me everything you
 9 can remember about those two conversations?
 10 A. Yes, sir. And Mr. Pete Trussell
 11 was in there. If you wanted to talk to him,
 12 he may remember some things I don't remember.
 13 Q. Pete Trussell?
 14 A. (Witness nods head.)
 15 Q. Who is that?
 16 A. He's Tim's brother that Tim is
 17 working where he was working with Bonnie.
 18 Q. And how old is Pete?
 19 A. I don't know. I'd say he was a
 20 good many years probably older than me. I'd
 21 say he was --
 22 Q. Older than you?
 23 A. -- in his seventies.

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1 Yes, sir.
 2 Q. And what was he doing so far as
 3 work was concerned? What position did he
 4 have?
 5 A. He had the position that Tim
 6 Trussell has now.
 7 Q. Do you know what he's doing
 8 currently?
 9 A. No, sir.
 10 Q. Now, other than the one comment
 11 that you made about thinking that age had
 12 something to do with the decision, did you
 13 tell -- did you say anything else to Mr.
 14 Stewart about your age in either of those
 15 conversations?
 16 A. No, sir.
 17 Q. And did you tell him why you
 18 thought age had something to do with it?
 19 A. I insinuated -- I guess, more
 20 than what I said, I insinuated that age was
 21 the reason that he didn't send me back up
 22 there on that route.
 23 Q. Now, when you say you insinuated

13 (Pages 46 to 49)

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1 rather than actually said, how did you do
2 that?

3 A. I told him that I felt like that
4 it was age discrimination, the reason he
5 didn't send me back up there.

6 Q. All right. And what did he say
7 to you? Did he tell you that wasn't the
8 reason?

9 A. He said that they had people
10 working there that was older than me.

11 Q. Did he tell you age wasn't the
12 reason?

13 A. No, sir.

14 Q. Did you understand from what he
15 did tell you that that was his position, that
16 age wasn't the reason?

17 A. No, sir.

18 Q. What did you understand him to be
19 saying, then, when he told you that there
20 were --

21 A. That age was the reason that he
22 didn't send me back up there.

23 Q. I'm sorry. That what?

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1 A. That age is the reason that he
2 didn't send me back to Bells.

3 Q. You understood him to be telling
4 you that?

5 A. Yes, sir.

6 Q. When he told you that there were
7 older people than you working for the
8 company?

9 A. Working for the company, yes,
10 sir.

11 Q. Why did you understand that to
12 mean that age was the reason he wasn't
13 sending you back?

14 A. Well, most of the older people
15 that I knew working for the company was in
16 different type jobs. I don't know of anybody
17 my age that was in the same type job.

18 Q. Well, Mr. Stewart didn't tell you
19 that age had anything to do with not sending
20 you back to Bells, did he?

21 A. No, sir, he didn't. He didn't
22 tell me that.

23 Q. Did anybody else tell you that?

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1 A. No, sir, nobody -- I mean, nobody
2 ever -- they just told me that it didn't work
3 out up there.

4 Q. And I believe you told me
5 earlier, he didn't give you an explanation of
6 what he -- of what he meant by it didn't work
7 out?

8 A. No, sir.

9 Q. Did you have an understanding of
10 what he meant?

11 A. I understood that it was because
12 of my age.

13 Q. Okay. Well, why did you think
14 that the decision not to send you back to
15 Bells had something to do with your age?

16 A. Well, as a general rule, when
17 somebody increased a route, had a good
18 increase in sales, and had a few problems on
19 their route, they just left them on the
20 route. They left me on the one route for, I
21 don't know, fourteen, fifteen years.

22 Q. Well, that wasn't an ironclad
23 rule of the company, though, was it?

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1 A. I don't know of any ironclad
2 rules that the company had.

3 Q. Well, you also would agree with
4 me, would you not, that it was pretty common
5 for station managers to say that they didn't
6 want somebody back and the company not send
7 that person back, correct?

8 A. I don't know. I hadn't been
9 around enough to know how they operate on
10 that.

11 Q. So, you don't know how the --

12 A. I don't know --

13 Q. -- decision making process works?

14 A. Not -- no, sir.

15 Q. You have known of people, though,
16 that have been --

17 A. I don't know of anybody --

18 Q. -- on a route one year and
19 somewhere else the next?

20 A. I don't know of anybody that had
21 increased their route, and then, went on a
22 route that didn't have the opportunity to go
23 back on that route.

14 (Pages 50 to 53)

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1 Q. Now, at the time that you were
2 told that you were not going back to Bells,
3 weren't Earl Ledbetter and Donald McGrady
4 running routes with the company?

5 A. I don't really know what Earl and
6 Donald were doing. I thought Earl was going
7 around checking stations out. Donald McGrady
8 probably was running a route in Atlanta, I
9 think.

10 Q. And both -- and both --

11 A. I'm not real sure.

12 Q. Okay. And both of those
13 gentlemen are older than you, are they not?

14 A. Yes, sir. And they left both of
15 them on the routes that they were on, as far
16 as I know.

17 Q. Did Joe Stewart tell you when he
18 told you you weren't going back to Bells that
19 Adam Alley did not want you back?

20 A. No, sir.

21 Q. All right. Other than what
22 you've told me so far, are there any other
23 reasons that you believe that the decision

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1 not to send you back to Bells had anything to
2 do with your age?

3 A. The only -- the only reason that
4 I know they didn't send me back is because of
5 my age.

6 Q. All right. Well, what I'm asking
7 you is, are there any other facts that you
8 think support the proposition that you
9 weren't sent back because of your age, other
10 than what you've told me so far?

11 A. There are no facts to support a
12 reason they didn't send me back.

13 Q. Okay. I want to make sure we're
14 on the same sheet of music. What I'm asking
15 you, have you told me all the facts that you
16 believe support the idea that they didn't
17 send you back because of your age?

18 A. The only reason that they didn't
19 send me back is because of my age.

20 Q. Okay. But I'm asking you why you
21 believe that. Is there any reason that you
22 believe that, other than what you've already
23 told me?

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1 MR. MORTON: Let's let him answer
2 the question.

3 MR. ROBERSON: Sure.

4 A. I could probably make a general
5 statement about that question, the direct
6 cause was, but I didn't have any problems
7 there on that route.

8 Q. (BY MR. MORTON) So, the only --
9 okay. So, to clarify, you believe it was
10 your age, because you didn't have any
11 problems up there?

12 A. Yes, sir.

13 Q. And they're not -- you don't have
14 any other facts that support the proposition
15 that your age had anything to do with that
16 decision; is that right?

17 A. The -- that's right, the only
18 reason --

19 MR. MORTON: Okay. Do you need
20 to talk to him?

21 MR. ROBERSON: No, I don't need
22 to talk. I was just going to -- Terry is a
23 plant salesman. He's not a discrimination

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1 lawyer. But if you want me to wait until you
2 complete your examination, I will. I was
3 just going to ask him a question. He may not
4 know that that suggests age discrimination.
5 I do know that it does. But if you want me
6 to wait --

7 MR. MORTON: Well, if you want
8 to -- if you want to -- if you want to go
9 ahead and ask him that question, go ahead,
10 because you're entitled to question him at
11 the end of the deposition anyway.

12 MR. ROBERSON: And I think we're
13 all trying to get --

14 MR. MORTON: I think I know
15 what -- go ahead.

16
17 VOIR DIRE EXAMINATION BY MR. ROBERSON:

18
19 Q. Terry, do you know who replaced
20 you and took your route up in Bells,
21 Tennessee?

22 A. Yes, sir.

23 Q. Who was that?

15 (Pages 54 to 57)

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1 A. Les Branum.
 2 Q. All right. Do you know how old
 3 he is, approximately? I know you don't
 4 know --
 5 A. I would say approximately in his
 6 thirties.
 7 Q. And he's substantially younger
 8 than you --
 9 A. Yes, sir.
 10 Q. -- is that correct?
 11 A. Yes, sir.
 12 Q. I know you're not a
 13 discrimination lawyer, but it is evidence
 14 that can suggest discrimination if a person
 15 who replaced you is substantially younger
 16 than you. So, you do know that, correct?
 17 A. Yes, sir.
 18 Q. You know he -- the person that
 19 replaced you was substantially younger than
 20 you?
 21 A. Yes, sir.
 22 Q. He's asking you for facts. You
 23 were trying to tell him. He didn't ask you

Page 59

1 that question. I'm not suggesting he's a bad
 2 lawyer. I'm just trying to help you give him
 3 the information he's asking for, okay?
 4 A. Yes, sir.
 5 Q. So, that is one fact that does
 6 suggest discrimination, right?
 7 A. Right.
 8 MR. ROBERSON: Okay. I'm sorry.
 9 I didn't mean to steal your thunder.
 10 MR. MORTON: No, I understand
 11 where you're coming from.
 12 EXAMINATION BY MR. MORTON:
 13
 14 Q. Do you know who made the decision
 15 for -- what did you say the man's name was
 16 that replaced you?
 17 A. Les Branum.
 18 Q. Les Branum?
 19 A. (Witness nods head.)
 20 Q. Do you know who made the decision
 21 for him to replace you?
 22 A. I don't really know who makes

Page 60

1 those decisions. You know, you just get up
 2 one day, and that's what they've decided to
 3 do.
 4 Q. Okay. And do you have any idea
 5 of when that decision was made for him to
 6 replace you?
 7 A. No, sir.
 8 Q. Did he go on the same route that
 9 you went, or do you know?
 10 A. I heard that they changed those
 11 routes up. I hadn't been up there to see.
 12 But I heard that they made a lot of changes
 13 in that route the next year.
 14 Q. What kind of changes?
 15 A. They made it shorter and put
 16 bigger stores on them, bigger sale stores on
 17 them.
 18 Q. Who told you that?
 19 A. Just looking. I mean, I don't
 20 really know that. I just -- that's just
 21 hearsay. They had closed a station down.
 22 And they changed a lot of routes up there
 23 around a lot.

Page 61

1 Q. At that particular time?
 2 A. Yes, sir.
 3 Q. And when you say they closed a
 4 station down, what do you mean?
 5 A. They had a station up there close
 6 to that one, and the stations were close to
 7 each other. And they just decided that they
 8 would close one down and put them into two
 9 other stations. I don't understand exactly
 10 what I'm talking about. Joe does that and --
 11 Q. Did they close the -- did they
 12 close the station that you worked out of?
 13 A. No, sir, they kept that one.
 14 Q. Closed the other one?
 15 MR. ROBERSON: Restructured it,
 16 basically?
 17 THE WITNESS: Restructured it.
 18 MR. MORTON: Okay.
 19 Q. Do you know who made that
 20 decision?
 21 A. I'm sure it was management of
 22 Bonnie Plant Farm.
 23 Q. And do you know how many total

16 (Pages 58 to 61)

FREEDOM COURT REPORTING

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1 route salesmen there were out of the combined
2 stations?

3 A. No, sir.

4 Q. Do you know whether there were
5 more or less or the same number --

6 A. I don't have --

7 Q. -- as there had been?

8 A. -- any idea.

9 They figured out how the company
10 simply can get a truck to all the stores and
11 try to get them there in time to sell the
12 plants.

13 THE WITNESS: If it's okay, I'd
14 like to take a restroom break.

15 MR. MORTON: Okay. Let's go off
16 the record.

17
18 (Whereupon, a brief recess was
19 taken.)

20
21 MR. MORTON: All right. Back on
22 the record.

23 Q. Now, when you were working at

Page 64

1 with the company as far as you know?

2 A. As far as I know, they are, yes,
3 sir.

4 Q. Johnny Fendelson is about your
5 age, isn't he?

6 A. He's a few years younger than I
7 am.

8 Q. Isn't he in his early sixties, or
9 do you know?

10 A. He's probably -- he might be
11 sixty. I don't know. He might not be sixty.

12 Q. Are you kin to him?

13 A. Yes.

14 Q. How?

15 A. My daddy's his grandmother's
16 brother.

17 Q. Do you know whether he's still
18 with Bonnie?

19 A. Yes, sir, he's probably still
20 with Bonnie.

21 Q. And he was a route salesman like
22 you?

23 A. Yes, sir.

Page 63

1 Bells, did you work with a fellow named
2 Willie Hughes?

3 A. Yes, sir.

4 Q. Do you know him?
5 And he was a driver, was he not?

6 A. Yes, sir.

7 Q. He's about your age, isn't he?

8 A. I think he's younger than I am.

9 Q. Pardon?

10 A. I think he's younger than I am.

11 Q. By what, a couple of years?

12 A. I wouldn't know what. I don't
13 know what it would be, his birthday is.

14 Q. Do you know a fellow named James
15 A. Brown --

16 A. Yes, sir.

17 Q. -- up in Bells?

18 Is he close to your age?

19 A. Well, he's what -- he's a few
20 years younger than I am.

21 Q. You knew Johnny Fendelson, right?

22 A. Yes, sir.

23 Q. Are all three of those guys still

Page 65

1 Q. And are you aware that he's been
2 promoted to where he's running a mini-station
3 now? Did you know that?

4 A. He had said something to me about
5 it. He thought he was going to make a change
6 this year.

7 Q. Is he happy about that?

8 A. He's excited about the
9 opportunity to make more money. It helps his
10 Social Security benefits. It helps his
11 401(k) benefits.

12 Q. I asked you about Mr. James A.
13 Brown. He was a route salesman like you,
14 wasn't he?

15 A. Yes, sir.

16 Q. All right. You said that you
17 ultimately ended up in Donaldsonville,
18 Louisiana, in the February after you didn't
19 go back to Bells. So, that would have been
20 February of '06, right?

21 A. Yes, sir.

22 Q. Who told you to go to
23 Donaldsonville?

17 (Pages 62 to 65)

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Page 66

1 A. Joe.

2 Q. And what did you do in
3 Donaldsonville?

4 A. Well, I spent a lot of time
5 opening the stores up and went on a route a
6 couple of times for Charlie when he needed to
7 be somewhere else.

8 Q. Now, when you say you spent time
9 opening stores up, what do you mean?

10 A. Going into a new business that
11 wasn't doing business with Bonnie Plant Farm
12 and talk to them about handling Bonnie
13 Product Farm's products.

14 Q. Now, was the idea in
15 Donaldsonville to develop a route down there,
16 a new route?

17 A. I think that -- I don't really
18 know, but I think that they had a lot of
19 chain stores working. And they'd like to get
20 a few more independents in the area to work
21 if they -- but I don't really know.

22 Q. Did you have a route down there?

23 A. No, sir.

Page 67

1 Q. How were you paid?

2 A. I was paid on a draw.

3 Q. The same draw you've been making
4 everywhere else?

5 A. Yes, sir. And they -- it seemed
6 like they like give the younger people higher
7 draws. And they gave me the lowest draw
8 available.

9 Q. What younger people had higher
10 draws than you? Well, before we go into
11 that, you said seems like. Can you testify
12 under oath that anybody younger than you had
13 a higher draw?

14 A. Oh, yes, sir.

15 Q. All right. Who had a higher
16 draw?

17 A. I wouldn't want to just start
18 naming people, but if you would check
19 records, I think you would find that most of
20 the new people that they started, most of the
21 new people that were there did.

22 Q. What was your draw when you were
23 in Donaldsonville?

Page 68

1 A. A thousand dollars biweekly.

2 Q. And wasn't that the standard
3 draw, standard biweekly amount, to give to
4 the standard yearly draw?

5 A. I don't know how they did them.
6 I just noticed that mine was usually lower
7 than whoever I was talking to said theirs
8 was.

9 Q. Okay. So, you're basing --

10 A. Just basing it on hearsay of who
11 I talked to through the company.

12 Q. And those would be other people
13 in your position --

14 A. Yes, sir.

15 Q. -- have told you that?

16 Nobody in management told you
17 that?

18 A. No, sir.

19 Q. And did you complain to anybody
20 about your draws?

21 A. No, sir.

22 Q. And how long were you in
23 Donaldsonville?

Page 69

1 A. I imagine about a month, just a
2 guess.

3 Q. Where did you go then?

4 A. I had a guy that quit a route in
5 Jasper, Alabama. I went up to Jasper,
6 Alabama.

7 Q. All right. Were you told to go
8 there or were you asked if you wanted to go
9 there?

10 A. Well, you know, when your boss
11 man tells you something -- have you ever
12 worked for anybody? If your boss man tells
13 you something, usually, if you want to keep
14 your job, you go do it. I mean, Joe's been
15 telling me for a lot of years to go do this,
16 go do that. So, you know, I don't know how
17 you want to --

18 Q. Well, did somebody ask you if you
19 wanted to go to Jasper or tell you to go to
20 Jasper?

21 A. They said go to Jasper and run
22 this route.

23 Q. Who told you that?

18 (Pages 66 to 69)

FREEDOM COURT REPORTING

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1 A. You know, I don't even -- I don't
2 remember.

3 Q. Now, by going to Jasper, you had
4 your own route rather than just going in and
5 working, opening up work in Donaldsonville,
6 correct?

7 A. Joe told me that he couldn't pay
8 me commission, but I could go up there and,
9 you know, and work it.

10 Q. So, you're telling me you didn't
11 get paid any commission for working in
12 Jasper?

13 A. That's right. They hired a
14 younger man to run that route, and they're
15 paying him commission. They told me that it
16 didn't work out for me up there.

17 Q. Okay. But I want to make sure I
18 understand. You're telling me that you
19 didn't get any commission for running the
20 route in Jasper?

21 A. No, sir.

22 Q. No, sir, you didn't?

23 A. No, sir, I did not get any

Page 71

1 commission.

2 Q. How were you paid?

3 A. They just kept sending me my
4 biweekly draw.

5 Q. Which was a thousand dollars a
6 month?

7 A. No, sir, a thousand dollars every
8 two weeks.

9 Q. A thousand dollars every two
10 weeks.

11 And did that continue year round?

12 A. Last year, they stopped sending
13 it. Started sending me a -- I don't know how
14 much it was, but it come out to me getting
15 sixty-five dollars a week. Sixty-five
16 thirty-five -- sixty-five dollars every two
17 weeks. And then, it started back February
18 the 22nd to getting a thousand dollars
19 biweekly.

20 Q. February 22nd, 2008?

21 A. Yes, sir.

22 Q. Did your draws typically drop off
23 during the off season?

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1 A. My draws had never dropped
2 before. I had always gotten more money.
3 When you don't -- when you don't get paid
4 your normal commission, it costs you money on
5 what you're going to draw in Social Security,
6 it cost you money on your 401(k), it cost you
7 money on -- it's a big, big drawback to you.
8 It cuts your unemployment draw when you're --
9 through the work force commission when you're
10 off. It puts you where it's hard for you to
11 pay bills and --

12 Q. Now, the year we're talking about
13 here is 2006; is that correct?

14 A. Yes, sir, when I went to Jasper.
15 I never got any --

16 MR. MORTON: Let's mark that as
17 the first exhibit, please.

18
19 (Whereupon, Defendant's Exhibit 1
20 was marked and copy of same is
21 attached hereto.)

22
23 Q. (BY MR. MORTON) Mr. Watson, let

Page 73

1 me show you what's been marked as Defendant's
2 Exhibit 1 to your deposition. Now, that's
3 what's called a settlement sheet, right?

4 A. Yes, sir.

5 Q. And this is a settlement sheet
6 for you for the spring of 2006, correct?

7 A. That's what it's got on here,
8 yes, sir.

9 Q. And that would have been for the
10 period that you were working in Jasper,
11 correct?

12 A. The way they pay, it's hard to
13 keep up with what they're paying for.

14 Q. Well, can you tell me one way or
15 the other whether or not this is your
16 settlement sheet for the spring of 2006?

17 A. This is the first time I have
18 looked at this. And I don't see where
19 they -- they've got it dated 23rd of August
20 of '07. And this is the first time I have
21 seen this piece of paper.

22 Q. And it's your testimony, you have
23 not seen Defendant's Exhibit 1 before, Mr.

19 (Pages 70 to 73)

FREEDOM COURT REPORTING

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1 Watson?

2 A. No, sir, this is my first time to
3 see this. And I'm not sure -- I don't really
4 know. I see where we've got fines of
5 fourteen hundred and fifty dollars. I don't
6 know what that would be from.

7 Q. You don't know what a chain store
8 skip fine is?

9 A. I didn't skip them.

10 Q. How many helpers did you have on
11 this route?

12 A. I had two.

13 Q. And you paid them eleven
14 thousand, two hundred and thirty-two dollars?

15 A. See, I wouldn't know, because
16 that labor must include something other than
17 time. I mean, this -- this looks like some
18 kind of prorated something. But I don't know
19 how they prorate it.

20 Q. Do you know whether it's accurate
21 or not?

22 A. No, sir, I haven't -- I mean,
23 I -- it appears -- it doesn't appear to be a

Page 75

1 proper --

2 Q. Have you seen another settlement
3 sheet for the spring of 2006?

4 A. No, sir, this is the only one
5 I've ever seen right here.

6 MR. MORTON: Let's make that 2 if
7 we could.

8
9 (Whereupon, Defendant's Exhibit 2
10 was marked and copy of same is
11 attached hereto.)

12
13 Q. (BY MR. MORTON) Let me show you
14 Defendant's Exhibit 2, which is a document
15 which you and your lawyer gave me today. And
16 I believe those are your W-2 forms from
17 Alabama Farmers for 2006; is that correct?

18 A. Yes, sir.

19 Q. And, in fact, is it correct, it's
20 reflected on there that Alabama Farmers paid
21 you somewhere north of thirty-eight thousand
22 dollars during 2006?

23 A. On that, that was the settlement

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1 from Tennessee. And the settlement, we got a
2 copy of that from some fall business that I
3 had worked. That wasn't a settlement from
4 the year of 2006 on this -- on this return.

5 MR. ROBERSON: In other words,
6 the income trails them a year, if that makes
7 any sense.

8 Q. (BY MR. MORTON) So, the wages on
9 there were paid to you when?

10 A. I'm sure it was paid in 2006.

11 Q. All right.

12 A. But for what -- do you have the
13 settlement sheet for this year?

14 MR. ROBERSON: But the work was
15 done in 2005?

16 THE WITNESS: Yes, sir.

17 MR. MORTON: Well, I'll tell you
18 what, let's let him answer the questions,
19 okay?

20 Q. Are you saying that the work was
21 done in 2005?

22 A. Yes, sir, the work was done in
23 the prior time.

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1 Q. Now --

2 A. You should have a settlement
3 statement for that, just like this one
4 (indicating), that shows that.

5 Q. Okay. Well, the first thing I
6 need to know is, is it your sworn testimony
7 that Defendant's Exhibit Number 1, that
8 settlement sheet, is not accurate?

9 A. That settlement sheet is from
10 money earned the prior -- in prior years.

11 Q. The settlement sheet that's
12 marked Defendant's Exhibit 1?

13 A. Yes, sir.

14 Q. And it is not an accurate
15 statement of what you earned in the spring of
16 2006?

17 A. No, sir.

18 Q. Now, at the end of 2006, were
19 you -- had you received more in draws than
20 you had earned in commission?

21 A. I have no way of knowing, because
22 I've seen no paperwork.

23 Q. You never saw a settlement

20 (Pages 74 to 77)

FREEDOM COURT REPORTING

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1 sheet --
 2 A. No, sir.
 3 Q. -- for 2006?
 4 A. No, sir.
 5 Q. Do you know what you made in the
 6 spring of 2006? Do you know, rather -- let
 7 me withdraw that.
 8 Do you know what your total sales
 9 were in the spring of 2006?
 10 A. No, sir. I tried to track them.
 11 And I was gone before the -- got the final
 12 rebates and the final -- and the final sales.
 13 Q. When you say you were gone, what
 14 do you mean?
 15 A. I was -- I had -- I had gotten
 16 off from work.
 17 Q. Why had you gotten off from work?
 18 A. The season had ended.
 19 Q. And what did you do then?
 20 A. See, when the season ends, you
 21 don't necessarily have your complete sales
 22 in. You don't have all --
 23 Q. All right. Did the company ever

1 commission. Didn't have enough sales.
 2 Q. Didn't have enough sales to
 3 support the draw?
 4 A. Yes, sir.
 5 Q. What did you say to that?
 6 A. I just took it as an answer. And
 7 I can't remember who I -- I think I asked
 8 Jeff Seymour for my paperwork and never got
 9 it.
 10 Q. Did you ask Jeff why your draw
 11 was reduced?
 12 A. Yes, sir.
 13 Q. What did he say?
 14 A. He said he'd get around to
 15 settling up or something. But it's always --
 16 it's always a problem, you know, getting
 17 settlement sheets and ended up getting the
 18 settlement sheets.
 19 Q. You mean, it's always been like
 20 that since you've worked with the company?
 21 A. When I worked for Joe Stewart, it
 22 wasn't no problem. Since I went to work for
 23 Bonnie Plant Farm, it was.

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1 allow your insurance coverage to lapse?
 2 A. No, sir.
 3 Q. And do you know -- and you're
 4 responsible for paying for part of that
 5 insurance --
 6 A. Yes, sir.
 7 Q. -- are you not?
 8 And do you know whether or not
 9 that's the reason your draw was reduced?
 10 A. No, sir, I never knew that was
 11 the reason my draw was reduced.
 12 Q. Did you ever ask anybody why your
 13 draw was reduced?
 14 A. Yes.
 15 Q. Who did you ask?
 16 A. I asked Joe Stewart, I asked Jeff
 17 Seymour.
 18 Q. Anybody else?
 19 A. I can't think of anybody else
 20 that I would have asked.
 21 Q. All right. What did Joe Stewart
 22 tell you?
 23 A. He said that I didn't have enough

1 Q. Do you have any reason to believe
 2 that Joe Stewart was not telling you the
 3 truth when he told you that you did not have
 4 sufficient --
 5 A. No, sir.
 6 Q. -- sales to support the draw?
 7 A. I had no -- I had -- I had no
 8 reason at all.
 9 Q. All right. Do you have any
 10 reason now to believe he wasn't telling the
 11 truth?
 12 A. No, sir, I just haven't seen it.
 13 And I don't really -- we're showing no
 14 Wal-Mart increases. I don't know about that.
 15 I don't know about -- I just don't know about
 16 some of the things that I see on here.
 17 Q. You just don't know whether
 18 they're accurate or not?
 19 A. Yes, sir, I just don't know.
 20 Q. All right. Is there any
 21 particular thing on Exhibit 1 that you can
 22 tell me that's not accurate?
 23 A. No, sir, but I can tell you that

21 (Pages 78 to 81)

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1 you'd have to go in and check Wal-Mart sales,
2 Lowe's sales, Home Depot sales to see about
3 those one percents. And those one percents,
4 they add up on your -- on your total when you
5 qualify for them.

6 Q. But you don't know whether you
7 qualified for those or not?

8 A. No, sir, I don't.

9 Q. All right. Your first year in
10 Bells, did you not have a lower total sales
11 amount than had been on that route the year
12 before?

13 A. I had never been told.

14 Q. Okay. So, you don't know the
15 answer to that?

16 A. So, I don't know the answer to
17 that.

18 Q. Okay. Now, when you went to
19 Jasper, when you were sent to Jasper, wasn't
20 that an opportunity to make more money than
21 you were making in Donaldsonville?

22 A. Joe told me that he couldn't pay
23 me commission. So, I went to Jasper to

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1 complete -- to complete the route.

2 Q. Well, the answer to the question
3 is what?

4 A. Sir?

5 Q. The answer to the question is
6 what? Was it an opportunity for you to make
7 more money or not?

8 A. No, sir, it wasn't an opportunity
9 to make more money. It was a -- I was on a
10 set draw.

11 Q. Had you ever been in that
12 situation before?

13 A. No, sir.

14 Q. Are you aware of other people in
15 the company who have done that?

16 A. No, sir.

17 Q. Now, after you worked your year
18 in Jasper -- by the way, who did you work for
19 up there?

20 A. Joey Padgett.

21 Q. How did you and Mr. Padgett get
22 along?

23 A. As far as I know, we got along

Page 84

1 all right.

2 Q. Did he ever criticize your work
3 or any aspect of your work?

4 A. No, sir.

5 Q. Anybody else in Jasper
6 criticize --

7 A. No, sir.

8 Q. -- your work?

9 Now, how long was your route up
10 there in Jasper compared to the other routes
11 being run in that area?

12 A. I had one of the longer routes.

13 Q. And did you have an air ride seat
14 in Jasper?

15 A. Yes, sir.

16 Q. And an air ride suspension?

17 A. Yes, sir.

18 Q. And how many helpers did you have
19 in Jasper?

20 A. I had two.

21 Q. The whole time you were there?

22 A. Yes, sir, the whole time I was
23 there.

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1 Q. And who paid for those since you
2 weren't getting commission?

3 A. I don't know where they took the
4 pay out of.

5 Q. Who were the helpers?

6 A. Quinton something was one of them
7 and Michael something was the other one.

8 Q. Did you pick them?

9 A. No, sir.

10 Q. Did you inherit them?

11 A. Yes, sir.

12 Q. Did they do a good job?

13 A. Yes, sir.

14 Q. Did you decide how much their
15 draw was going to be?

16 A. No, sir.

17 Q. Who did?

18 A. Well, whoever they was working
19 for before I got there. They were hourly
20 employees.

21 Q. When you were in Bells, working
22 in Bells, did you ever tell anybody that you
23 were only working for your insurance

22 (Pages 82 to 85)

FREEDOM COURT REPORTING

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1 coverage?

2 A. No, sir.

3 Q. Have you ever told anybody that?

4 A. Yes, sir.

5 Q. Who'd you tell?

6 A. I don't know. I mentioned -- I
7 mean, I told Butch that one of the most
8 important things for me to do was to keep my
9 insurance coverage until I was sixty-five,
10 because it would be hard for me to get
11 insurance anywhere else because of my age.

12 Q. You told Butch that?

13 A. Yes, sir, and I probably told
14 some other people that, but I just don't
15 remember making an all-out statement saying
16 that.

17 Q. Well, is it true that you have
18 continued to work since you started working
19 in Bells in order to ensure that you do have
20 insurance?

21 A. That's one of the main reasons
22 that I have worked, is to maintain my
23 insurance, maintain my Social Security,

Page 87

1 maintain my 401(k), and maintain my income.

2 Q. Okay.

3 A. That's the reason I work.

4 Q. Did you ever tell anybody, other
5 than Butch, that you were working for
6 insurance coverage?

7 A. Yes, sir, I probably have said
8 that.

9 Q. Do you remember who else you told
10 that?

11 A. No, sir.

12 Q. Now, when you were working in
13 south Alabama, did you -- I'm sorry, in south
14 Louisiana, working out of what, Texas?

15 MR. MORTON: What was it?

16 MR. ROBERSON: New Summerfield,
17 Texas.

18 Q. (BY MR. MORTON) New Summerfield,
19 Texas, did you ever sell any plants for cash
20 and keep the money while you were running
21 that route for Bonnie?

22 A. No, sir.

23 Q. When you were working in Bells,

Page 88

1 did you ever sleep in the truck while your
2 helper worked the store?

3 A. I probably propped my feet up
4 because -- to keep the circulation in my
5 feet.

6 Q. Okay. Did you go to sleep?

7 A. I don't remember ever going to
8 sleep.

9 Q. How often did you sit in the
10 truck while the helper worked the store?

11 A. It depended on the size of the
12 store we were at. If we was somewhere where
13 we put a lot of plants, needed help, I was
14 out there putting plants. If we were parked
15 in a parking lot out of town where you
16 couldn't -- needed to move to let people in
17 and out of parking places and things like
18 that, I stayed in.

19 Q. Is that a common occurrence, for
20 you to stay in the truck while your helper
21 worked the store?

22 A. No, sir.

23 Q. Had it ever happened when you

Page 89

1 were working in Jasper?

2 A. No, sir.

3 Q. Did it ever happen when you were
4 working in Donaldsonville?

5 A. No, sir.

6 Q. You're now working in Beeville,
7 Texas; is that right?

8 A. Yes, sir. But I have --

9 Q. Anything happen out there?

10 A. No, sir.

11 Q. So, the only place where you ever
12 stayed in the car while your helper worked
13 the store was Bells; is that right?

14 A. Yes, sir.

15 Q. And your helper at that time was
16 a fellow named Michael Rhodes?

17 A. Yes, sir.

18 Q. Did Michael also do the driving
19 for you?

20 A. No, sir.

21 Q. Did he do some of it?

22 A. No, sir.

23 Q. Never drove the truck?

23 (Pages 86 to 89)

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1 A. No, sir.
 2 Q. Have you ever been told that
 3 customers called in and complained that you
 4 were sleeping in the truck?
 5 A. No, sir.
 6 Q. If that were the case, would it
 7 be true?
 8 A. No, sir.
 9 Q. When did you leave Beeville to
 10 come here for your deposition?
 11 A. Friday afternoon.
 12 Q. And who's your station manager
 13 out there?
 14 A. Chris Hall.
 15 Q. And when did you tell Chris you
 16 were coming here?
 17 A. Sunday afternoon.
 18 Q. After you were already here?
 19 A. Yes, sir.
 20 Q. Did you make any arrangements for
 21 anybody to run your route on Saturday?
 22 A. I had the route in shape for the
 23 weekend. And the route probably needs

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1 running now.
 2 Q. So, you didn't make any
 3 arrangements to have anybody cover it on
 4 Saturday, correct?
 5 A. No, sir. I had --
 6 Q. And, in fact, you had not even
 7 told -- did not even tell Chris until Sunday
 8 that you weren't going to be there running
 9 the route; is that right?
 10 A. Yes, sir.
 11 Q. And did you run the route Friday?
 12 A. Yes, sir.
 13 Q. All of it?
 14 A. No, sir.
 15 Q. How much of it?
 16 A. I don't know how you would count
 17 it. I think I worked about seven stores
 18 Friday, just off the wall guess.
 19 Q. Just what?
 20 A. I think about seven stores
 21 Friday, just off the wall guess.
 22 Q. Is that fewer stores than you
 23 normally would run in a day?

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1 A. Depends on where you were and
 2 what time you left and --
 3 Q. What time did you knock off on
 4 Friday?
 5 A. Around lunchtime.
 6 Q. Normally, this time of year, what
 7 time do you work to in the evening?
 8 A. It depends on what day it is,
 9 whether I'm loaded or not.
 10 Q. You don't normally knock off
 11 around lunchtime, do you?
 12 A. On a lot of Fridays, I do. That
 13 route down there has slowed down. It's a
 14 February, March route. And on that route, it
 15 would be normal to knock off right at lunch.
 16 Q. How many times have you done that
 17 this year?
 18 A. I don't know.
 19 Q. And --
 20 A. A lot of times --
 21 Q. I guess, there would be time
 22 records --
 23 A. -- you would load on Friday

Page 93

1 afternoon and --
 2 Q. There would be time records for
 3 your helpers, wouldn't there?
 4 A. Yes, sir.
 5 Q. How many helpers are you using on
 6 that route?
 7 A. One now. I used two to help set
 8 up the racks and get the route set up.
 9 Q. Is that a short run?
 10 A. No, sir, that's an unordinarily
 11 long route. They --
 12 Q. Who sent you to Beeville?
 13 A. Joe Stewart.
 14 Q. Did he tell you why?
 15 A. He said that was the only place
 16 he could find for me to work because of my
 17 age.
 18 Q. Did he tell you it was because of
 19 your age?
 20 A. That's what he kindly insinuated.
 21 Q. How's that?
 22 A. He thought, I think -- you know,
 23 you hate -- you hate to say what you think

24 (Pages 90 to 93)

FREEDOM COURT REPORTING

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1 somebody's thinking --
 2 Q. Right.
 3 A. -- you know.
 4 I don't really know what the man
 5 was thinking. I told you what I thought.
 6 He's sitting there. Ask him.
 7 Q. Well, I'm asking you at this
 8 point. And you're telling me that you're
 9 believing that your going to Beeville had
 10 something to do with your age is based purely
 11 on what you thought Joe was thinking?
 12 A. Yes, sir.
 13 Q. Not on anything he said?
 14 A. No, sir.
 15 Q. What conversations did you and he
 16 have about your going to Beeville?
 17 A. He told me that was the only
 18 place he had for me.
 19 Q. Well, is that the entirety of
 20 your conversation?
 21 A. That's the basis of it.
 22 Q. Was there anything else said by
 23 you or anything else said by him in that

Page 95

1 conversation?
 2 A. I don't recall anything else.
 3 Q. Did you have any conversations
 4 about why you weren't going back to Jasper?
 5 A. He told me it didn't work out up
 6 there for me.
 7 Q. Did he tell you why?
 8 A. He kindly insinuated it was
 9 because of my age.
 10 Q. And how did he do that?
 11 A. He had hired a younger man to run
 12 that route up there.
 13 Q. Who is that?
 14 A. I don't know.
 15 Q. Who told you that a younger man
 16 had been hired to run that route?
 17 A. Nobody. I've just never seen
 18 them hire anybody in my age limits. I've
 19 never seen them hire a routeman my age. So,
 20 you would figure that it would have been a
 21 younger person.
 22 Q. Okay. So, that is speculation on
 23 your part? You don't know one way or the

Page 96

1 other?
 2 A. Well, from what I've seen with
 3 the company, I mean, I've never seen them
 4 hire a routeman my age.
 5 Q. Okay. But you don't know who was
 6 running that route, do you?
 7 A. I have no idea.
 8 Q. Or how old that person is?
 9 A. No, sir.
 10 Q. Did Mr. Stewart do anything else
 11 to insinuate that the reason you weren't sent
 12 back up there was because of your age? Or,
 13 rather, since you don't know who was running
 14 that route, did he do anything to insinuate
 15 that it was your age or your age had anything
 16 to do with the decision not to send you back
 17 up there?
 18 A. That was the only thing that I
 19 could figure.
 20 Q. The only reason you could figure
 21 was because of your age?
 22 A. Yes, sir.
 23 Q. Okay. Have you told me all of

Page 97

1 the reasons that you believe that decision
 2 was based on your age?
 3 A. For some reason, it's important
 4 that I make less money, that I have less to
 5 go into my 401(k), I have less money to pay
 6 my bills with. And I guess he figures
 7 because I'm older, it don't cost as much for
 8 me to live.
 9 Q. And all of that is speculation on
 10 your part, correct?
 11 A. From what I've been told and see.
 12 Q. Well, what have you been told
 13 that leads you to that belief?
 14 A. I've been told that they never
 15 had heard of anybody -- moving somebody off
 16 of a route that made a good increase on it
 17 and was doing a good job on it.
 18 Q. Who told you that?
 19 A. Comer Lee Phillips.
 20 Q. C-o-m-e-r?
 21 A. Yes, sir.
 22 Q. And who is he?
 23 A. He's an employee with Bonnie. I

25 (Pages 94 to 97)

FREEDOM COURT REPORTING

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1 don't know what --

2 Q. Is he a route salesman?

3 A. I don't really know what his -- I
4 don't really know what his position with the
5 company is at this time.

6 Q. Do you know what his position was
7 at the time he made the statement to you?

8 A. He went around checking on
9 growing stations and checking on stores to be
10 sure people had everything in the store they
11 needed. I don't really know what all he did.

12 Q. Did he say anything about your
13 age?

14 A. I don't recall him saying
15 anything about it.

16 Q. When did he make that statement
17 to you about he didn't know about anybody
18 else that had been pulled off a route after
19 they had made an increase and done a good
20 job?

21 A. He just made it in general one
22 day up there at -- I can't remember if it was
23 in Bells or Beeville.

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1 Q. So, you're not sure when it was
2 made?

3 A. No, sir.

4 Q. Did you tell Mr. Stewart when he
5 sent you to Beeville that you were glad to
6 get the work?

7 A. Yes, sir.

8 Q. And did you tell --

9 A. I'm thankful for the time that I
10 spent working for Joe.

11 Q. Did you tell Mr. Stewart when he
12 sent you to Donaldsonville that you were glad
13 to get the work?

14 A. Yes, sir.

15 Q. Did you tell Tim Trussell that?

16 A. Yes, sir.

17 Q. On both occasions?

18 A. Yes, sir.

19 Q. Other than what you've told me,
20 are there any other facts on which you base
21 your belief that any decision Bonnie or
22 Alabama Farmers has made about you is based
23 on your age?

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1 A. Would you mind repeating that
2 question?

3 Q. I'll be glad to.

4 Other than what you've told me,
5 are there any other facts that you believe
6 support the proposition that Bonnie or AFC
7 has discriminated against you on the basis of
8 your age?

9 A. I don't see them hiring people my
10 age. They hire a lot of people every year,
11 and I don't see people my age in the same job
12 that I'm in. I see younger people but not my
13 age. And that's basically what I have to say
14 about it, I guess.

15 Q. You don't know of any other facts
16 that support the proposition that you've been
17 discriminated against on the basis of your
18 age, other than that and what you previously
19 told me in this deposition?

20 A. It appears that when I made my
21 complaint, I made my complaint in the wide
22 open to them. They did harm to me behind
23 closed doors, and then, took -- brought me in

Page 101

1 later. And when I made my complaint, it
2 appears that the company would have had
3 somebody to have sat down and talked with me
4 about my problems and try to help me with
5 them.

6 Q. Okay. Well, and you said you
7 don't see the company hiring people your age.
8 Do you know of anybody your age who's been
9 turned down for a job with the company in
10 your position?

11 A. Not right offhand, I don't.

12 Q. So, you don't know anything about
13 the pool of applicants that the company
14 has --

15 A. I don't know.

16 Q. -- to choose from, correct?

17 A. No, sir.

18 Q. Correct?

19 A. That's correct. That's correct.
20 That's correct. I'm sorry.

21 Q. That's all right.

22 Now, you said that the company
23 should have sat down with you and talked to

26 (Pages 98 to 101)

FREEDOM COURT REPORTING

Page 102

1 you about your problems and tried to help you
2 with them. What problems are those, Mr.
3 Watson?

4 A. Nobody ever discussed with me the
5 problems that I had staying on my routes.
6 Nobody ever discussed with me why I had to go
7 down to Beeville, Texas. I just had very
8 little rapport to no rapport from them to
9 help me see how devastating this treatment
10 has been to me. I think that they should
11 double the damages that I have lost and --
12 and that's basically how I feel.

13 Q. Well, going back to nobody ever
14 talked to you about the problems. Did you
15 ask anybody to talk to you about the
16 problems?

17 A. I wrote a letter.

18 Q. Well, you had several face-to-
19 face conversations, you've told me about,
20 with Mr. Stewart. In any of those
21 conversations, did you ask him to discuss any
22 problems with you?

23 A. No, sir. We were sitting in

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1 there discussing what he had decided to do
2 with me. And, you know, no reason was given
3 to why he had decided to do that.

4 Q. Okay. But you didn't ask him,
5 did you?

6 A. No, sir.

7 Q. And, in fact, he's the general
8 sales manager for the company, isn't he?

9 A. Yes, sir.

10 Q. And it is his job to decide where
11 to send people, isn't it?

12 A. Yes, sir. I've never doubted
13 what he's told me. I've always gone to work
14 when he said go to work, and I've always
15 tried to do a good job.

16 Q. I mean, you really honestly don't
17 believe that Joe Stewart has discriminated
18 against you because of your age?

19 A. Yes, sir.

20 MR. MORTON: Let's take a break
21 for a minute.

23 (Whereupon, a brief recess was

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1 taken.)

2
3 (Whereupon, Defendant's Exhibit 3
4 was marked and copy of same is
5 attached hereto.)
6

7 Q. (BY MR. MORTON) Mr. Watson, let
8 me ask you to look at --

9 MR. ROBERSON: I don't think
10 Terry's seen it. So, he might need to look
11 at it a minute.

12 Q. (BY MR. MORTON) Let me ask you
13 to take a look at Exhibit 3 to your
14 deposition, Mr. Watson. Now, that is the
15 settlement sheet for the spring of 2007 for
16 you. Have you seen it before?

17 A. No, sir.

18 Q. Do you know whether or not it's
19 accurate?

20 A. No, sir, but I would -- you know,
21 I wouldn't say that it was.

22 Q. I'm sorry?

23 A. No, sir, I don't know.

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1 MR. MORTON: Let's go off the
2 record for a second.

3
4 (Whereupon, a discussion was held
5 off the record.)
6

7 MR. MORTON: Okay. Are you ready
8 to go back on the record?

9 Q. Mr. Watson, I believe I'd asked
10 you if you knew whether or not the settlement
11 sheet for the spring of 2007, what's in
12 Exhibit 3, was accurate. And I don't know
13 whether your answer was recorded or not.

14 A. This appears to be a -- to be on
15 target to being correct.

16 Q. All right. And at the end of the
17 year, in 2007, you ended up, shall we say,
18 upside down, correct?

19 A. Yes, sir.

20 Q. You had received more in draws --

21 A. Yes, sir.

22 Q. -- than you had earned in
23 commissions?

27 (Pages 102 to 105)

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1 A. Yes, sir.
 2 Q. And you continued to receive
 3 draws after this document was issued; is that
 4 right?
 5 A. Yes, sir. I hadn't seen this
 6 document.
 7 Q. Okay. But you continued to
 8 receive draws after February 29th, 2008,
 9 right?
 10 A. I started receiving draws
 11 February the 22nd, back --
 12 Q. All right.
 13 A. No. My draw was cut. It was
 14 drastically cut prior to this.
 15 Q. Now, was your draw drastically
 16 cut in 2006 and 2007, after the season?
 17 A. No, sir. Yes, sir, 2006.
 18 Q. And 2007?
 19 A. And part of 2000 -- wait. What
 20 year are we in now?
 21 Q. 2008.
 22 A. 2007, it was drastically cut.
 23 Q. Okay.

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1 A. And part of 2008.
 2 Q. Beg your pardon?
 3 A. And part of 2008.
 4 Q. Okay. But it was not reduced in
 5 2006?
 6 A. No, sir.
 7 Q. Okay.
 8 A. It was not reduced in 2006.
 9 Q. All right. And then, you
 10 inquired about why your draw had been
 11 reduced?
 12 A. Yes, sir.
 13 Q. And you've already described
 14 those conversations for me, correct?
 15 A. Yes, sir.
 16 Q. Okay. All right. Now, if this
 17 document is accurate, and you said you think
 18 it looks like it probably is, it ends up with
 19 you owing the company somewhere around ten
 20 thousand dollars, correct?
 21 A. It shows me owing how much?
 22 Q. Owing seven thousand, seven
 23 hundred and three seventy-five plus the

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1 remaining advances of twenty-five hundred
 2 dollars.
 3 A. I didn't understand exactly like
 4 that, but that's the first time I've ever
 5 gotten one of these that I was in the hole.
 6 Nobody's ever explained to me really how it
 7 works and what goes on. I've never been in
 8 this situation before.
 9 Q. So, you're not sure how it
 10 operates?
 11 A. So, I'm not sure how it operates.
 12 Q. All right. Well, you do know,
 13 though, that the company is not -- the
 14 company has not tried to recover any of the
 15 money that's shown as a negative balance on
 16 here from you? You do know that, don't you?
 17 A. Yes, sir.
 18 Q. And you do know that the company
 19 has kept your health insurance in force?
 20 A. Yes, sir.
 21 Q. Despite the fact --
 22 A. Despite the fact --
 23 Q. -- that you ended up upside down?

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1 A. Yes, sir.
 2 Q. I'm sorry. I think I may have
 3 asked you this. When did you find out that
 4 you were not going back to Bells?
 5 A. Just a guess, November the 2nd.
 6 I mean, on election day. I don't remember if
 7 it was November -- in November of --
 8 Q. Of 2005?
 9 A. Yes, sir.
 10 MR. MORTON: Okay. Let's mark
 11 this as the next exhibit if we could.
 12
 13 (Whereupon, Defendant's Exhibit 4
 14 was marked and copy of same is
 15 attached hereto.)
 16
 17 MR. ROBERSON: Dent, I believe
 18 you couldn't have produced this. It wasn't
 19 FAXed until the 24th.
 20 MR. MORTON: I think I already
 21 had a copy of it.
 22 MR. ROBERSON: Oh, okay.
 23 MR. MORTON: I think it has been

28 (Pages 106 to 109)

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1 produced. If it hadn't, I apologize.

2 Q. Mr. Watson, let me show you
3 Exhibit Number 4 to your deposition. Now, is
4 that a letter that you wrote to Tate Gatlin?

5 A. Well, yes, sir.

6 Q. At the time you wrote that letter
7 to Tate Gatlin, you already knew that you
8 were not going back to Bells, correct?

9 A. Correct.

10 Q. And prior to the date on this
11 letter, January 10th, 2006, you had not
12 complained to anybody about age
13 discrimination; is that right?

14 A. No, sir.

15 Q. Who had you complained to?

16 A. I had not.

17 Q. You had not. Okay.

18 Now, at the time that you wrote
19 this letter, Watson 4, did you already have
20 counsel? Did you already have a lawyer to
21 represent you?

22 A. At this time, you could say yes
23 or no. I probably did. We were just waiting

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1 to see what the reaction was going to be,
2 because I was -- had confidence and was
3 hoping the whole time that my route situation
4 would be straightened out.

5 Q. All right. And what lawyer did
6 you have at that time?

7 A. Albert Adams, who is my cousin.
8 And we were --

9 Q. Now, let me caution you. I'm not
10 entitled to know what you and Mr. Adams
11 talked about, okay? So, you don't want to
12 tell me that, and I'm not going to ask you
13 that, okay?

14 MR. ROBERSON: He's not going to
15 solicit that information. So, don't tell
16 him.

17 Q. (BY MR. MORTON) Okay. Who
18 actually composed this letter?

19 A. His secretary typed it up.

20 Q. And did she compose it? Was she
21 responsible for what it said?

22 A. I was responsible for some of it,
23 and I'm sure Albert was responsible for some

Page 112

1 things that was said.

2 Q. All right. And then, you signed
3 it?

4 A. Yes, sir.

5 Q. Now, did you mail it to Mr.
6 Gatlin or did you hand it to him?

7 A. I physically handed it to him and
8 asked him to hand a copy to Joe. I wanted to
9 be sure that Joe got it. Joe wasn't in the
10 office at the time that I went in.

11 Q. Now, Mr. Gatlin was not your
12 supervisor, correct?

13 A. Mr. Gatlin is the safety
14 director.

15 Q. Right. And he was -- he was not
16 your supervisor, right?

17 A. No, sir, he was not my
18 supervisor.

19 Q. Did you have any conversation
20 with him about your situation when you handed
21 this letter to him?

22 A. I just told him that I was being
23 put on another route and that I was trying to

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1 keep my job with the company.

2 Q. Now, why did you address the
3 letter to Mr. Gatlin rather than Mr. Stewart
4 if you wanted Mr. Stewart to get it?

5 A. To start this thing off -- do you
6 want to go back to the first where it
7 started?

8 Q. Well, no, sir. I just want you
9 to answer my question, which is why you
10 addressed it to Mr. Gatlin?

11 A. Mr. Gatlin had performed an
12 industrial rehab program at the meeting.

13 Q. He had performed an industrial
14 rehab program what?

15 A. At the meeting.

16 Q. What meeting?

17 A. At the 2005 meeting.

18 Q. Okay. And what sort of
19 industrial rehab program did he perform?

20 A. Step -- stepping up and down off
21 of boxes, moving around and doing things that
22 I wasn't able to do at the time, because I
23 had had operations on my feet.

29 (Pages 110 to 113)

FREEDOM COURT REPORTING

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1 Q. All right. And Mr. Gatlin
2 performed a rehab program --
3 A. For Bonnie Plant Farm.
4 Q. -- for Bonnie Plant Farm?
5 All right.
6 A. At the 2005 sales meeting in
7 Auburn, Alabama.
8 Q. All right. And did he perform it
9 just on you or --
10 A. He performed it on everybody at
11 the meeting.
12 Q. All right. Did you voluntarily
13 participate in it?
14 A. Yes, sir.
15 Q. Now, at that time, was Mr. Gatlin
16 employed by Alabama Farmers?
17 A. Yes, sir.
18 Q. And did you get some sort of
19 report in connection with what he performed
20 on you?
21 A. I wasn't able to do any of it at
22 the time. So --
23 Q. You were not able --

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1 A. -- that was when he -- yes, sir,
2 I was not able -- I was not physically able
3 to participate.
4 So, I didn't participate. They
5 just passed by me.
6 Q. All right. Did you tell them you
7 were not able to participate?
8 A. Yes, sir.
9 Q. All right. What, if anything,
10 was said to you at that time about the fact
11 that you were not participating?
12 A. Nothing. They said that I was to
13 help employees and to help employees see what
14 they needed to do to stay fit and able to do
15 the job.
16 Q. All right. And since you weren't
17 able to do it at that time, did you do it at
18 some other time?
19 A. They made an appointment with me
20 to an industrial rehab center in Troy,
21 Alabama. I can't remember the name of it.
22 But -- and I asked them if they were calling
23 me in there to do that industrial rehab to

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1 fire me. And he assured me that I was over
2 there for him to help me.
3 Q. Okay.
4 A. And he talked to me a few minutes
5 and told me that I just needed to go on about
6 my business.
7 Q. Meaning what?
8 A. That I was not able to do the
9 rehab program at that time.
10 Q. Did you agree with that
11 assessment?
12 A. Yes, sir.
13 Q. All right. Did you ever do the
14 rehab program?
15 A. No, sir. The guy told me that it
16 really didn't have anything to do with your
17 job, that it was just to help you have a
18 healthier lifestyle and a --
19 Q. So, you never did it?
20 A. No, sir.
21 Q. All right. Now, with that
22 background, why did you address the letter to
23 Mr. Gatlin?

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1 A. Because he was the one that
2 started to give me the industrial rehab
3 first. And the next week after I went to
4 Troy, Joe called me in the office to fire me.
5 Q. Now, when you say after you went
6 to Troy, is that where you went to the
7 appointment?
8 A. Yes, sir, that's where I went to
9 the appointment.
10 Q. And you say Joe called you in the
11 office to fire you?
12 A. The next week.
13 Q. All right. And tell me about
14 that conversation.
15 A. He said that he would help me
16 fill out my disability papers and that -- and
17 I told him that the day I quit work and sat
18 down, that'd be where I'd be. I'd be sitting
19 in that chair. And I pleaded to get a job
20 back.
21 Q. And I'm sorry. The last thing
22 you said, I didn't understand it.
23 A. I pleaded to get a job back.

30 (Pages 114 to 117)

FREEDOM COURT REPORTING

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1 Q. Did Joe tell you -- ever tell you
2 you were fired?

3 A. No, sir.

4 Q. Did he ever tell you you were
5 terminated or words to that effect?

6 A. No, sir.

7 Q. And, in fact, he ultimately did
8 find a place for you to work in --

9 A. He ultimately worked with me.

10 Q. Pardon?

11 A. He ultimately worked with me.

12 But he put me in positions where I couldn't
13 make the money that I needed -- that I needed
14 to make to keep up a good standard of living,
15 my 401(k), my --

16 Q. Well, did you tell Tate Gatlin in
17 the meeting in Auburn, Alabama, that you
18 couldn't do the rehab program?

19 A. Yes, sir.

20 Q. And did you tell the gentleman
21 that you went to see in Troy that you
22 couldn't do the rehab program?

23 A. Yes, sir, the gentleman in Troy

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1 just realized that he couldn't ask me to
2 stand on one foot, because I didn't have a
3 foot that was ready to stand on right then.

4 Q. Okay. Did you ever have any form
5 of assessment of the type that Mr. Gatlin and
6 the fellow in Troy wanted to perform? Did
7 you ever have any type of assessment like
8 that?

9 A. What do you mean? What do you
10 mean by that question?

11 Q. Did you ever go somewhere where
12 they saw how long you could stand on one leg
13 or --

14 A. Oh, no, sir, I was never -- I
15 never -- I never had it done.

16 Q. All right. And the conversation
17 in which you said a minute ago that Mr.
18 Stewart told you that he would help you fill
19 out disability papers, that was before you
20 made your complaint of age discrimination,
21 correct?

22 A. Yes, sir.

23 Q. All right. Now, at the time that

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1 you addressed this letter on January 10th,
2 2006, to Mr. Gatlin, did you have any
3 information that Mr. Gatlin had anything to
4 do with where you were going to work?

5 A. No, sir.

6 Q. All right. Now, you didn't put
7 anything in the letter to Mr. Gatlin about
8 his forwarding the letter to Mr. Stewart,
9 correct?

10 A. No, sir.

11 Q. And the letter doesn't show a
12 carbon copy to Mr. Stewart, correct?

13 A. No, sir.

14 Q. And, in fact, it was just
15 addressed to Mr. Gatlin, right?

16 A. Right.

17 Q. Did Mr. Gatlin read the letter in
18 front of you? Did he read it at the time you
19 gave it to him?

20 A. Yes, sir.

21 Q. What did he say?

22 A. He didn't comment on it. He just
23 said --

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1 Q. And did you ever, in fact, have
2 any conversation with anybody, other than
3 Mr. Gatlin, regarding this letter --

4 A. No, sir.

5 Q. -- which is Watson Exhibit 4?

6 MR. MORTON: All right. Let's
7 mark this as 5, please.

8
9 (Whereupon, Defendant's Exhibit 5
10 was marked and copy of same is
11 attached hereto.)
12

13 Q. (BY MR. MORTON) Let me show you
14 what's been marked as Exhibit 5 to your
15 deposition, Mr. Watson. Is that a letter
16 that you wrote to Mr. Gatlin?

17 A. My lawyer, Albert, wrote the
18 letter, and I signed it.

19 Q. All right. Now, the second line
20 on --

21 A. The secretary typed the letter.

22 Q. Okay. This one does show a
23 carbon copy to Joe Stewart, correct?

31 (Pages 118 to 121)

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<p>1 A. Correct.</p> <p>2 Q. Did you mail this letter?</p> <p>3 A. No, sir, I hand delivered this</p> <p>4 letter. I would have delivered it to Joe,</p> <p>5 but Joe wasn't in there.</p> <p>6 Q. All right.</p> <p>7 A. I wanted to take it --</p> <p>8 Q. But you hand delivered a copy of</p> <p>9 the letter to Mr. Gatlin?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Did you bring him a copy for Mr.</p> <p>12 Stewart?</p> <p>13 A. You know, I think I had one</p> <p>14 copied. That's all. I don't think I had two</p> <p>15 copies.</p> <p>16 Q. Did Mr. Gatlin read this letter</p> <p>17 in front of you?</p> <p>18 A. I don't remember whether he read</p> <p>19 this one or not. This was in a time of the</p> <p>20 year when he was getting ready to leave. And</p> <p>21 I don't remember.</p> <p>22 Q. Did you have any discussion with</p> <p>23 him about the letter?</p>	<p>1 A. I had been in a -- in a truck</p> <p>2 wreck. And the doctor that was tending me</p> <p>3 had put some restrictions on me due to the</p> <p>4 wreck, due to the bone spurs in my neck. And</p> <p>5 I had gone through a rehabilitation program.</p> <p>6 Q. All right. When were you in the</p> <p>7 truck wreck? I mean, was this something that</p> <p>8 happened in late '05, early '06?</p> <p>9 A. I can't remember when it was, but</p> <p>10 we have it on record somewhere over there.</p> <p>11 Q. Was it --</p> <p>12 A. I think --</p> <p>13 Q. Were you on company business when</p> <p>14 that happened?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Was that a wreck that occurred</p> <p>17 back in December of 2002 that's referenced --</p> <p>18 A. Yes.</p> <p>19 Q. -- in this January 10th letter?</p> <p>20 A. Yes.</p> <p>21 Q. Well, what I'm asking you is, you</p> <p>22 had just gotten a letter from your doctor</p> <p>23 that said -- releasing you to work without</p>
Page 123	Page 125
<p>1 A. No, sir.</p> <p>2 Q. Did you have any discussion with</p> <p>3 him at all when you brought him this letter?</p> <p>4 A. No, sir.</p> <p>5 Q. The second line of the letter</p> <p>6 says, and I am bringing you a letter today</p> <p>7 from my doctor saying I'm able to work</p> <p>8 without restrictions. Was that a letter you</p> <p>9 had just received from your doctor?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And what had your restrictions</p> <p>12 been prior to your receiving that letter?</p> <p>13 A. I had had both feet operated on,</p> <p>14 I'd had my right knee replaced, and I have a</p> <p>15 problem with bone spurs.</p> <p>16 Q. Okay. But evidently your doctor</p> <p>17 had had you on some sort of restrictions as</p> <p>18 to what you could and couldn't do. And I'm</p> <p>19 asking you what those were.</p> <p>20 Well, let me back up and let me</p> <p>21 ask it this way: Prior to getting the letter</p> <p>22 that's referenced here, had you been unable</p> <p>23 to work at all?</p>	<p>1 restrictions on or about February 2nd of</p> <p>2 2006. What were those restrictions? What</p> <p>3 could you or couldn't you do prior to the</p> <p>4 time the doctor released you?</p> <p>5 A. Well, from bending over and</p> <p>6 picking things up. When you go to a doctor,</p> <p>7 they put it -- the restrictions that I</p> <p>8 remember, walking and bending over and</p> <p>9 picking things up.</p> <p>10 Q. And when were you put under those</p> <p>11 restrictions; do you recall?</p> <p>12 A. Back in 2002 and during the</p> <p>13 process of getting my knees operated on when</p> <p>14 I had that truck wreck. And when I was going</p> <p>15 up to Houston Clinic to get my yearly -- my</p> <p>16 operations.</p> <p>17 Q. Well, were the restrictions that</p> <p>18 you had at the time or up to the time that</p> <p>19 you wrote this letter, February 2nd, 2006,</p> <p>20 were those a result of the surgery that you</p> <p>21 had had on your knees and on your feet?</p> <p>22 A. Partially, yes, sir.</p> <p>23 Q. Did you ever have any</p>

32 (Pages 122 to 125)

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1 conversation with Mr. Stewart about this
2 letter that's labeled Exhibit 5?

3 A. No, sir.

4 Q. Did you ever have any
5 conversation with anybody else at Bonnie
6 regarding that letter?

7 A. No, sir. Nobody ever called me
8 to talk to me about these or anything.

9 Q. Now, shortly after you received
10 this letter is when you got sent to
11 Donaldsonville, correct?

12 A. Yes, sir.

13 Q. Now, other than what you have
14 told me in this deposition here today, have
15 you ever had any conversations with anybody
16 at Bonnie about age discrimination?

17 A. No at-length conversations. Some
18 people have asked me about it.

19 Q. About your lawsuit?

20 A. Yes, sir.

21 Q. Who asked about your lawsuit, to
22 speak with you?

23 A. Johnny Roy asked me about it.

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1 Q. Pardon me?

2 A. My cousin, Johnny Roy Fendelson,
3 asked me about it. Tony Brown. I talked to
4 Butch Stewart about it. That's about -- it
5 has not been a big topic of conversation for
6 me, because it wasn't something that I wanted
7 to do or intended to do. I'd like to recover
8 the damages that it has done -- that has been
9 done to me.

10 Q. If there are, in fact, people
11 older than you running routes with the
12 company -- I mean, filling your position,
13 would that convince you that you haven't been
14 discriminated against because of your age?

15 A. No, sir.

16 Q. Why not?

17 A. Everybody at Bonnie gets a little
18 different treatment. And Bonnie doesn't
19 appear to be hiring people my age. So,
20 people -- somebody -- just because somebody's
21 older than me has a route, he probably has a
22 route that he -- you know, that he always
23 had. He probably hadn't had to go down and

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1 find a store in Harleton, Texas, or Westaco,
2 Texas, or Brownsville, Texas, down on the
3 border where you're having a border war,
4 where you have to be, you know, very careful
5 about where you leave your truck.

6 Q. Well, if somebody else who's
7 older than you is running a route and hasn't
8 had to do that, would that tend to indicate
9 to you that the company doesn't base its
10 decisions on age?

11 A. No, sir, if somebody older than
12 me had a route, they probably had the same
13 route they had last year.

14 Q. Well, the fact that they had the
15 same route they had last year, wouldn't that
16 tend to indicate to you that the company
17 doesn't discriminate on the basis of age?

18 A. No, sir.

19 Q. Well, why do you think -- if, in
20 fact, the company has discriminated against
21 you, Terry Watson, on the basis of your age,
22 why do you think you've been singled out for
23 that treatment?

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1 A. I have no way to know. And I --
2 it's probably a good thing I don't know the
3 answer to that question.

4 Q. You don't have any opinion as to
5 why the company would single you out to
6 discriminate against you on the basis of your
7 age?

8 A. If I formed an opinion, it
9 wouldn't be good for the person I formed
10 it -- I formed it against. So, I choose to
11 just sit and listen and see what to do.

12 Q. Well, would it be fair to say,
13 then, that you don't have an opinion as to
14 why the company would single you out for age
15 discrimination?

16 A. I sure would. I have no idea why
17 they picked me out to discriminate against
18 me.

19 Q. Do you know anybody else they've
20 discriminated against on the basis of their
21 age?

22 A. No, sir. I hadn't been going
23 around asking them.

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<p>1 MR. MORTON: Let's mark this one 2 as the next exhibit. 3 4 (Whereupon, Defendant's Exhibit 6 5 was marked and copy of same is 6 attached hereto.) 7 8 Q. (BY MR. MORTON) Let me show you 9 what's been marked Defendant's Exhibit 6. 10 That is Driver's Helper-Employment Contract 11 for Kenny Smith, right? 12 A. Yes, sir. 13 Q. And Kenny Smith is your helper, 14 correct? 15 A. Yes, sir. 16 Q. Did you fill this document out? 17 A. Yes, sir. 18 Q. And is it your signature over 19 here in the blank that says salesman? 20 A. Yes, sir. 21 Q. And down here at the bottom, it 22 says, Kenny B. Smith requests year round 23 driver pay. And then, there's something</p>	<p>1 Q. What did you say to Tim? 2 A. I told him that was fine. He 3 just, you know, wondered if he could get it. 4 Q. And -- 5 A. And I told him -- 6 Q. -- how old is Kenny Smith? 7 A. I imagine he's around forty, just 8 guessing. I don't really know. 9 Q. If he received year round driver 10 pay, wouldn't that increase the chance that 11 your labor cost would exceed your commission? 12 A. Well, it would -- it would put 13 him in a position to -- it may -- it may -- 14 it may would figure less on that long route. 15 It's two hundred fifteen miles from Beeville 16 to the big stores in Brownsville. And I 17 don't know if you've ever been down to 18 Brownsville, Westaco, Harleton, Rio Grande 19 City. I don't know if you've ever been down 20 to the border or not -- 21 Q. I haven't. 22 A. -- but it looks like Miami. 23 They're building Lowe's, Home</p>
Page 131	Page 133
<p>1 written below that line. What is that 2 written below that line? Can you read it? 3 A. I just said that I would like for 4 him to have it. 5 Q. And then, you wrote Arthur Terrell 6 wants it? 7 A. Yes, sir. 8 Q. And then, what does year round 9 driver pay mean? 10 A. They have people that can get on 11 year round pay where they, you know, work 12 year round with the company. And this guy's 13 been working for Bonnie Plant Farm ever since 14 he was a young child. And he asked me if I'd 15 see if he could get it. And the company 16 said, no, that he couldn't get it. 17 Q. If he were to get it, would it 18 come out of your pocket? 19 A. Yes, sir. 20 Q. And who said he couldn't get it? 21 A. Tim Trussell called me and told 22 me that he could not. I don't know who 23 the --</p>	<p>1 Depots, Wal-Marts down there like they're 2 going out of style. 3 Q. And my question simply is, if 4 Mr. Smith received year round driver pay -- 5 A. If he went on year round driver 6 pay, it would probably be less money. 7 Q. And why do you believe that? 8 A. Because they would -- that would 9 be a set amount of dollars that he made 10 and -- 11 Q. Doesn't he get paid by the hour? 12 A. Yes, sir, but he wouldn't be paid 13 by the hour if he was on the year round pay. 14 If he was on the year round pay, he would be 15 paid a certain amount of money per year. 16 Q. Do you know whether or not he's 17 required in his position to be paid by the 18 hour? 19 A. Do I know what? 20 Q. Do you know whether the law 21 requires, given his position, he be paid by 22 the hour? 23 A. No, sir, I had no idea what the</p>

34 (Pages 130 to 133)

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1 law was. I just made the request for him
 2 because he asked me to.
 3 Q. All right. But if it turned
 4 out --
 5 A. And the request was denied, and
 6 nobody -- nobody -- nobody got upset. Nobody
 7 said anything. It was just over. We got --
 8 we stayed at work, got up the next day and
 9 went to work. And find out, it wasn't --
 10 Q. Does he have a Commercial
 11 Driver's License?
 12 A. No, sir, but he has a health
 13 card. To drive these trucks, you only have
 14 to have a health card and a regular driver's
 15 license. And he has a health card and a
 16 driver's license.
 17 Q. And, in fact, you don't know for
 18 sure whether or not his receiving year round
 19 driver's pay would have increased or
 20 decreased his compensation, do you?
 21 A. That's true.
 22 Q. And, in fact, don't you think it
 23 would be strange for him to request something

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1 that would reduce his pay?
 2 A. No, sir, because if he could get
 3 on the year round program, it would qualify
 4 him for health insurance. And he was
 5 interested in getting some benefits.
 6 Q. As part of your job, are you
 7 required to get in and out of the back of
 8 your truck?
 9 A. Yes, sir.
 10 Q. Can you do that?
 11 A. Yes, sir.
 12 Q. When's the last time you did it?
 13 A. Probably Friday. I got in and
 14 pulled the plants out for the Wal-Mart in
 15 Alice, Texas.
 16 Q. How many times a day do you get
 17 in and out of the back of your truck?
 18 A. Some days, I don't even get in
 19 the back of the truck. But when I need to, I
 20 do.
 21 Q. Isn't it your responsibility to
 22 make sure that the load's safely loaded and
 23 secured?

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1 A. Yes, sir.
 2 Q. How can you do that without
 3 getting in the back of the truck?
 4 A. I can look up in the truck and
 5 see.
 6 Q. But you don't get up in --
 7 A. I can see all through the truck.
 8 I get up in there if I need to.
 9 Q. Is it physically difficult for
 10 you to get up in there?
 11 A. I can get in and out of the truck
 12 with a -- with difficulty. And if I -- I
 13 couldn't get in and out of the truck all day
 14 long like most people could. If I could, I
 15 always worked the back of my truck myself
 16 when I was able to get in and out of the back
 17 of it. But, now, I've gotten to where I
 18 can't, and I try to have somebody working
 19 with me that I can depend on to get up in the
 20 back of that truck and do what needs to be
 21 done up there.
 22 Q. But you can't get in and out like
 23 most people can, correct?

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1 A. Correct.
 2 Q. Did you sign a contract with
 3 Bonnie this year?
 4 A. I always sign them. I don't
 5 remember if I signed one this year or not.
 6 I'm sure I did. I'm sure I signed one at the
 7 sales meeting in August.
 8 MR. MORTON: Mark that.
 9
 10 (Whereupon, Defendant's Exhibit 7
 11 was marked and copy of same is
 12 attached hereto.)
 13
 14 Q. (BY MR. MORTON) Let me show you
 15 what's been marked Exhibit 7 to your
 16 deposition and ask if that is not a job
 17 description for your position as driver/
 18 salesman at Bonnie?
 19 A. Yes, sir.
 20 Q. You've seen it before, correct?
 21 A. Yes, sir.
 22 Q. And you understand that it does,
 23 in fact, accurately describe your duties and

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1 responsibilities --

2 A. Yes, sir.

3 Q. -- in that position, correct?

4 And would you agree with me that
5 in order to fully discharge your duties and
6 responsibilities, you need to be able to get
7 back and get in and out of the back of your
8 truck on a regular basis?

9 A. Well, I know what's in the back
10 of my truck. I get in and out of my truck
11 when I need to. And I've had no problem, and
12 nobody's ever told me I had a problem. Now,
13 you're telling me that I've got a problem
14 getting in and out of the back of my truck.
15 Where does that come from?

16 Q. I'm just asking you questions,
17 Mr. Watson. And you're telling me you do
18 have a difficult time getting in and out of
19 the back of the truck.

20 A. But I don't have a difficult time
21 running my route and doing what needs to be
22 done on that route.

23 Q. Are you happy with your current

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1 route?

2 A. No, sir.

3 Q. Why not?

4 A. It's a long route with a pile of
5 chain stores on it that's just too cumbersome
6 and too long and hard to work. It's a type
7 of route that is -- that is -- it's just
8 overloaded with chain stores.

9 Q. Don't chain stores -- when you
10 say chain stores, do you mean stores like
11 Wal-Marts, Lowe's?

12 A. Wal-Mart, Home Depot, Lowe's --

13 Q. And --

14 A. -- Kmart.

15 Q. And doesn't the presence of a lot
16 of chain stores on your route give you an
17 opportunity to make more money?

18 A. Excuse me. It depends on where
19 you are. The reason that I have -- I'll give
20 you an example. Adam Alley, he worked a
21 route out of Bells, Tennessee. And he had
22 about four stores on it, but one of them
23 could sell a hundred thousand dollars worth

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1 of plants.

2 I have stores down there, and we
3 don't really know what they'll sell. We
4 don't really have the product that they ask
5 for to put in the stores when they -- when
6 they want it. And it's -- that's just a
7 loaded question to say about this business.

8 Q. Well, you've got the same product
9 to sell to those stores that everybody else
10 that works out of Beeville, Texas, has, don't
11 you?

12 A. Those stores start selling in
13 February and March. And as a general rule,
14 it's hard to have a lot of product ready, you
15 know, in February and March.

16 Q. Did you understand my question?
17 My question is, don't you have the same
18 products to sell to those stores that
19 everybody else that works out of your station
20 has?

21 A. I have the product a month late
22 after that season down there has slowed down.

23 Q. At the same time that everybody

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1 else in Beeville, Texas --

2 A. At the same time they have
3 access to it --

4 Q. -- gets it, correct?

5 A. -- I have access to it, but it's
6 late for the people down on the border.

7 MR. MORTON: Let's mark this one
8 as the next exhibit.

9
10 (Whereupon, Defendant's Exhibit 8
11 was marked and copy of same is
12 attached hereto.)

13
14 Q. (BY MR. MORTON) What's Exhibit
15 8? Is that your charge of discrimination,
16 Mr. Watson?

17 A. What was your question?

18 Q. Is that your charge of
19 discrimination that you filed with the EEOC?

20 A. Yes, sir.

21 Q. And you understand that you
22 signed it under oath, right?

23 A. Yes, sir.

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1 Q. You say that you developed the
2 route in Bells, Tennessee, into a very
3 lucrative route. That route had actually
4 been around since the early '70s, hadn't it,
5 sir?

6 A. Yes, sir.

7 Q. You state in here that on your
8 route in Bells, Tennessee, you made forty-
9 five thousand dollars.

10 A. Yes, sir.

11 Q. Do you see that?

12 A. Yes, sir.

13 Q. Now, your W-2 for Bonnie for
14 2006, right?

15 MR. ROBERSON: He didn't work
16 that route in 2006.

17 Q. (BY MR. MORTON) You didn't work
18 that route in 2006?

19 A. No, sir.

20 Q. Well, does your 2006 W-2 reflect
21 your compensation from that route?

22 A. Let me see. I was paid that
23 on -- when I was in Donaldsonville,

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1 Louisiana. Where is that? It is hard -- it
2 is hard to keep up with when you're paid for
3 what, sir.

4 Q. Well, in 2006, you made thirty-
5 eight thousand dollars from Bonnie, right?

6 A. Right. But that was from 2005
7 payments, I'm sure.

8 Q. All right.

9 A. I'm not really sure what the
10 settlement sheet is. I'd have to look at
11 them, go through them, and go back and figure
12 it up what was what.

13 MR. MORTON: Let's mark these as
14 9.

15
16 (Whereupon, Defendant's Exhibit 9
17 was marked and copy of same is
18 attached hereto.)
19

20 Q. (BY MR. MORTON) Let me show you
21 what I've marked as Exhibit 9 to your
22 deposition. Ask you if those are not your
23 W-2s for 2003, 2004, and 2005?

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1 A. Yes, sir, these are my W-2s for
2 these years. But for what year I was paid on
3 them, my compensation was paid on what year I
4 made it, would be hard to tell looking at
5 this W-2.

6 Q. Okay. But in none of those
7 years, 2003, 2004, and 2005, were you paid
8 forty-five thousand dollars by Bonnie; isn't
9 that correct?

10 A. That is correct. But my pay for
11 2005 is not represented on the W-2 form.

12 Q. Well, is your pay for 2005 --
13 it's not represented on any of the W-2 forms?

14 A. I'm sure that part of it would be
15 over on the 2006. In 2006, I had to file
16 state income taxes to the State of Alabama
17 and to the State of Louisiana. And part of
18 that compensation was for money that I made
19 in Tennessee that I shouldn't have had to pay
20 any state income tax on.

21 Q. Why not?

22 A. Tennessee doesn't have a state
23 income tax.

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1 Q. Well, certainly, it's not
2 Bonnie's fault what the tax laws in other
3 states are, is it?

4 A. It's Bonnie's fault that they
5 paid me for money earned in Tennessee as if
6 it was earned in Louisiana.

7 Q. Did you take that up with Bonnie?

8 A. I just realized that I had to
9 fill the forms out and filled them out,
10 because I had been down there working. And
11 then, when I had time to look at it -- see, I
12 don't even have my forms yet for this year.
13 I'm going to have to get my taxes filled out
14 before April the 15th now. And I travel so
15 much until we're going to have to get the IRS
16 to send us the tax forms from 2006.

17 Q. Anybody running your route -- did
18 anybody run your route yesterday?

19 A. No, sir.

20 Q. Anybody running your route today?

21 A. No, sir.

22 Q. Why didn't you tell Chris Hall
23 until Sunday that you were going to be here

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1 instead of out there?

2 A. I really wasn't planning on
3 leaving Friday. I was planning on waiting
4 and leaving Saturday morning. And I just
5 changed my mind. And I've got a six-year-old
6 son that I've never spent Easter with. He
7 has lost his grandfather and grandmother on
8 his mother's side. And I said, if I'm going
9 to spend Easter with him, I've got to go now,
10 because it's a sixteen-hour drive.

11 And I didn't really think about
12 calling Chris Hall. And the route is in good
13 shape. And I feel sure he wouldn't send
14 anybody down there on it anyway.

15 Q. Don't you think, as your boss, he
16 had the right to know whether you were going
17 to be there or not?

18 A. He sure did.

19 Q. He's got a cell phone, doesn't
20 he?

21 A. He sure does.

22 Q. And you've got a cell phone,
23 don't you?

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1 A. Yes, sir.

2 Q. And you know his number, don't
3 you?

4 A. Yes, sir.

5 Q. You just didn't tell him?

6 A. I just didn't do it. There's no
7 other way around.

8 Q. Did you not get out to Beeville,
9 Texas, late this year?

10 A. No, sir. I got out there -- I
11 carried a new man out to Beeville. And I had
12 some problems at home that I had to come back
13 to see about. And nobody was put on my route
14 to see about anything then. So, I didn't
15 figure he would be concerned about putting
16 anybody on my route today.

17 Q. Didn't you get out to Beeville,
18 Texas, later than you were supposed to
19 report --

20 A. No, sir.

21 Q. -- initially?

22 A. No, sir.

23 Q. You went home and you stayed

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1 longer than you had told Chris Hall you were
2 going to stay, did you not?

3 A. Yes, sir.

4 Q. And, in fact, he called you
5 several times trying to find out when you
6 were coming back, didn't he?

7 A. I think he might have called me
8 one time, maybe twice. I told him what I was
9 doing. I take Coumadin.

10 Q. I beg your pardon?

11 A. I take Coumadin, which is rat
12 poison. It's what you feed a rat, and it
13 will cause them to bleed to death internally.
14 And I was having some problems with that
15 Coumadin. And I had to put Sam in the
16 hospital. He had pneumonia. And I had to go
17 leave him in the hospital and get him.

18 But I wasn't -- that's the
19 only -- that's the only time out of my tenure
20 with the company I've ever been late getting
21 started. And I went out there to start and
22 got -- showed the new man my route. And I
23 took the man around and showed him the stores

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1 on the route, because I was going to give
2 that route to him. And when it came time for
3 me to go back on mine, I had major problems
4 that I needed to see about.

5 Q. And there were, as you're aware,
6 a number of complaints from customers on your
7 routes about lack of service, correct?

8 A. No, sir, there are no complaints
9 that I know of on my route.

10 Q. You're not aware of any
11 complaints on your route at all?

12 A. No, sir.

13 Q. And you're not aware -- Tim
14 Trussell never told you that there were
15 complaints that you had not been to stores on
16 your route in a timely fashion?

17 A. He told me that I needed to get
18 down there and get that route straightened
19 out, that some of the stores had looked for
20 plants a little earlier than they got them.

21 Q. And had called him and wanted to
22 know where the plants were, correct?

23 A. I don't know who they called. I

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1 don't know who they talked to about it.
 2 Q. You don't know whether they made
 3 complaints or not?
 4 A. Huh-uh.
 5 Q. Right?
 6 A. Right. When you start off, they
 7 usually call you and tell you -- it's not
 8 unusual for them to call and tell you we're
 9 ready to get plants now. It's not an unusual
 10 call at all.
 11 Q. How late were you getting started
 12 on your route?
 13 A. I wouldn't know how to define
 14 that. I know the Home Depots didn't even
 15 come out to see us, we started so early. The
 16 Lowe's people wanted their racks in place.
 17 We had a problem getting them --
 18 Q. Well, let me ask it this way --
 19 A. -- in place and set up.
 20 Q. -- when were you supposed to
 21 start running that route?
 22 A. I normally started running that
 23 route the week that I carried Chris Salter

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1 down there and showed him my route. That's
 2 the week I should have started running that
 3 route.
 4 Q. And how much time did you miss by
 5 coming back to Birmingham, or coming back to
 6 Alabama?
 7 A. I don't really know. You know,
 8 you're just in the heat of working and trying
 9 to get things straightened out and do the
 10 best you can do.
 11 Q. Well, you don't know when you
 12 left out there and when you got back?
 13 A. I don't.
 14 Q. Why'd you come back here?
 15 A. I needed to see about my Coumadin
 16 levels, and I had to take Sam and put him in
 17 the hospital, because he had pneumonia. I
 18 had a death in the family, and I also lost a
 19 neighbor while I was here.
 20 Q. Okay. I'm asking you why you
 21 came back here.
 22 A. I came --
 23 MR. ROBERSON: I think he told

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1 you.
 2 A. I came back here to tend to --
 3 MR. MORTON: He's telling me that
 4 he lost a neighbor while he was here. That
 5 doesn't explain -- that doesn't answer my
 6 question as to why he came back here.
 7 A. I came back here to see my
 8 doctor.
 9 Q. (BY MR. MORTON) To see your
 10 daughter?
 11 A. Doctor.
 12 MR. ROBERSON: Doctor.
 13 Q. (BY MR. MORTON) To see your
 14 doctor. What doctor is that?
 15 A. Dr. Pat Walker.
 16 Q. And where is Dr. Pat Walker?
 17 A. He's in Vernon, Alabama.
 18 Q. And how long was that supposed to
 19 take?
 20 A. You don't know when you're having
 21 problems getting your blood level right.
 22 Q. Did you try to find a doctor in
 23 Texas?

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1 A. I have a doctor in Texas.
 2 Q. Why didn't you go to that doctor?
 3 A. He suggested -- he suggested that
 4 I come. I had to come home twice. The
 5 second time was a time that really hurt. I
 6 overdosed out there. And he said that I
 7 could have an allergic reaction, and it could
 8 be bad.
 9 Q. When was the second time you came
 10 back?
 11 A. I don't remember.
 12 Q. Was it this year?
 13 A. This year, yes, sir. I told you,
 14 this is the only year that I have ever been
 15 late on a route. And one time out of as many
 16 years as I've been out there, and I had no
 17 help offered me at all.
 18 Q. What do you mean no help offered
 19 you?
 20 A. Exactly what I said. Nobody
 21 offered to do anything on that route. And
 22 when I go back this time, if anybody's done
 23 anything on that route, it would be shocking.

39 (Pages 150 to 153)

FREEDOM COURT REPORTING

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1 Q. Did you ask anybody -- did you
2 ask anybody to run your route?

3 A. No, sir, there wasn't nobody out
4 there to ask. I didn't even know where the
5 route was. The way they showed me that
6 route, they just put some dots on a map.

7 Q. So, you've been back to Alabama
8 since you started in Beeville three times?
9 Twice were for, you said --

10 A. That's right, and this is --

11 Q. -- medical reasons --

12 A. -- third time.

13 Q. -- and then, this time?

14 A. That's right.

15 Q. The other two times, did you
16 tell --

17 A. This is the first time --

18 Q. -- Chris when you left?

19 MR. ROBERSON: Let him ask the
20 question.

21 A. Yes, sir. Yes, sir.

22 Q. (BY MR. MORTON) When will you be
23 back out there?

Page 155

1 A. Well, I was planning on driving
2 back tonight.

3 Q. When you were given your route,
4 weren't you given a list of customers and
5 addresses?

6 A. Yes, sir.

7 Q. Do you have access to a map?

8 A. Have you ever looked at a map in
9 south Texas?

10 Q. My question is, did you have
11 access to a map?

12 A. I went by the visitor's station
13 and picked a map up.

14 Q. And did you have phone numbers
15 for these places?

16 A. Yes, sir.

17 Q. Did you call them and find out
18 how to get there?

19 A. No, sir.

20 Q. Why not?

21 A. You usually just find them.

22 Q. Pardon me?

23 A. You usually just find them.

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1 Q. But that was an option you had
2 that you didn't exercise, right?

3 A. Yes. And those people speak a
4 different language, and it's hard to ask
5 somebody where something is out there. They
6 can tell me somebody's name out there, and I
7 might have no idea what they said.

8 Q. How old is Bill Rainer, by the
9 way?

10 A. I imagine he's a few years
11 younger than I am. I don't know for sure.

12 Q. You told me one medicine that you
13 were on. What are you on that medicine for?

14 A. To thin my blood.

15 Q. All right. What condition causes
16 you to need to have your blood thinned?

17 A. My heart.

18 Q. All right.

19 A. I need to be sure that I don't
20 have clots should I have a problem.

21 Q. And when did you develop problems
22 with your heart?

23 A. I had them all my life, and I

Page 157

1 found out about them in 2000.

2 Q. Did you miss time in 2007 as a
3 result of heart problems?

4 A. In when?

5 Q. 2007?

6 A. No, sir.

7 Q. Did you miss some time in 2007
8 for any reason?

9 A. No, sir.

10 Q. What other medications do you
11 take?

12 A. I take Actos.

13 Q. What is that for?

14 A. Sugar lowering drug.

15 Q. Are you diabetic?

16 A. Yes, sir.

17 Q. When did you find out you were
18 diabetic?

19 A. Joe sent me to get a physical
20 when I was working with him over in Union
21 Springs. And the doctor knew my family
22 history. It must have been mid '80s,
23 somewhere in there, just guessing.

40 (Pages 154 to 157)

FREEDOM COURT REPORTING

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1 Q. What else do you take?
 2 A. Clonidine.
 3 Q. What is that?
 4 A. That's a blood pressure lowering
 5 medicine.
 6 Q. What's it for?
 7 A. Heart.
 8 Q. What else?
 9 A. Diovan.
 10 Q. What's that for?
 11 A. I don't know. It's a heart
 12 medicine is all I know.
 13 Q. What other medications do you
 14 take?
 15 A. I take Glucophage.
 16 Q. Is that for the diabetes?
 17 A. Diabetes.
 18 Q. What else do you take?
 19 A. I take Lyrica.
 20 Q. For what?
 21 A. For nerves.
 22 Q. What else?
 23 A. I take Hydrocodeine.

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1 Q. What for?
 2 A. Pain. I take Skelaxin for pain.
 3 I take Florocid. And I take --
 4 Q. What's that for?
 5 A. Water pill.
 6 Q. What do you mean by water pill?
 7 A. It makes you go to the bathroom.
 8 It's a diuretic.
 9 Q. What else?
 10 A. Let's see. Metropol. It's a
 11 heart medicine.
 12 What else have you got? How many
 13 have you got on there?
 14 Q. One, two, three, four, five, six,
 15 seven, eight, nine, ten.
 16 A. Did you put -- yeah, you put
 17 Coumadin on there. I take some more, but I
 18 can't just right offhand recall them, and I
 19 know what they are.
 20 Q. All right. The ones that you've
 21 told me about, do you take those daily?
 22 A. Yes, sir.
 23 Q. And there are other medications

Page 160

1 you take daily as well?
 2 A. Yes, sir.
 3 Q. Do any of the medicines that you
 4 take make it unsafe for you to operate
 5 machinery?
 6 A. No, sir.
 7 Q. You specifically checked into
 8 that?
 9 A. Yes, sir. I have a --
 10 Q. That's your health card so you
 11 can drive?
 12 A. Yes, sir.
 13 Q. It was issued in October of '07?
 14 A. Yes, sir.
 15 Q. Have you added any medication
 16 since that time?
 17 A. No, sir.
 18 Q. You told me about your
 19 difficulties getting in and out of the truck.
 20 Do you have difficulties bending, stooping,
 21 or lifting?
 22 A. I don't have any problem moving
 23 plants, but I have a problem with weights.

Page 161

1 Q. What kind of problem with weights
 2 do you have?
 3 A. As long as I stay a certain
 4 height, none. If I go up too high with them.
 5 Q. In other words, you have problems
 6 lifting things above the level of your chest?
 7 A. Yes, sir, that would be up
 8 overhead, somewhere up there. I don't know
 9 exactly where the line is.
 10 Q. Do you have any other problems
 11 with weights?
 12 A. Well, not to mention that I can
 13 think of.
 14 Q. Do you have any problems with
 15 bending or stooping?
 16 A. No, sir. They said they was
 17 going to get a man to help me load my truck.
 18 Sometimes we have help and sometimes we
 19 don't.
 20 Q. All right. And this would be
 21 somebody in addition to Mr. Smith?
 22 A. Yes, sir.
 23 Q. And where would this person come

41 (Pages 158 to 161)

FREEDOM COURT REPORTING

Page 162

1 from?

2 A. There on the yard.

3 Q. All right. And what's his normal
4 job? Does he normally work in the
5 greenhouse?

6 A. Well, sometimes he would be
7 working on another truck or -- the
8 greenhouse, you don't get any help from them
9 down there.

10 Q. Do you and Mr. Smith need help
11 loading the truck?

12 A. Sometimes we do and sometimes --
13 when we can get it, if we need it. When we
14 can't, we do it ourselves.

15 Q. Who pays for the labor to help
16 you load your truck?

17 A. It's charged to my account.

18 Q. Charged to your account?

19 A. Yes, sir.

20 Q. At what rate?

21 A. At whatever rate that person is
22 being paid.

23 Q. Now, you have some obligations to

Page 163

1 Bonnie, do you not, to do business with a
2 certain number of schools and a certain
3 number of churches?

4 A. Yes, sir.

5 Q. And that would be twenty schools
6 and twenty churches?

7 A. Yes, sir.

8 Q. And how many schools and churches
9 have you signed up at this point?

10 A. I've probably got one church and
11 probably six schools, just guessing offhand.
12 That'll be one of the things that I'll start
13 doing hard when I go back.

14 Q. Are you behind on that with
15 respect to the other people out there in
16 Beeville?

17 A. I don't know what -- I don't
18 know. I have no idea what --

19 Q. Now, your performance, your
20 sales, your achievement of levels for bonuses
21 and so on affects the compensation of the
22 station manager, does it not?

23 A. Yes, sir.

Page 164

1 Q. If you don't do a good job, it
2 takes money out of his pocket, right?

3 A. That's right.

4 Q. What's the name of the church you
5 signed up?

6 A. It was a Presbyterian church over
7 there in Beeville. I don't remember what the
8 name of it was.

9 THE WITNESS: When you get where
10 we can, I'd like to take a restroom break.

11 MR. MORTON: All right. Why
12 don't we take a break?

13
14 (Whereupon, a brief recess was
15 taken.)

16
17 (Whereupon, Defendant's Exhibit
18 10 was marked and copy of same is
19 attached hereto.)

20
21 Q. (BY MR. MORTON) How tall are
22 you, Mr. Watson?

23 A. Around six one.

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1 Q. All right. And how much do you
2 weigh?

3 A. I weigh around three twenty-five,
4 three twenty-six now.

5 Q. All right. And what's the most
6 that you've weighed in the last two years?

7 A. Probably three thirty.

8 Q. Would you agree with me that your
9 physical condition makes it difficult for you
10 to do your job as a driver/salesman at
11 Bonnie?

12 A. I would agree with that theory,
13 but I have always been able to do the job and
14 get the job done regardless of it. Somehow,
15 I've been blessed to do it.

16 Q. Would you agree with me that you
17 are not capable of working as quickly as you
18 could when you were younger?

19 A. Yes, sir. I definitely can't
20 work as fast as I used to. Riding in them
21 trucks is rough on you.

22 Q. Let me show you Defendant's
23 Exhibit 10.

42 (Pages 162 to 165)

FREEDOM COURT REPORTING

Page 166

1 MR. MORTON: And, Jerry, I just
2 shot you a copy over there.

3 Q. Is that your settlement sheet,
4 your commission settlement sheet, for the
5 spring of 2005?

6 A. Fall, '04 and spring, '05. They
7 added -- yeah, they started adding the fall
8 sales then. I don't know where fall, '04
9 came from, and I don't know where spring, '05
10 came from.

11 Q. Pardon me, sir?

12 A. Where did fall, '04 come from?

13 Q. Did you ever work a fall route?

14 A. Yes, sir.

15 Q. When?

16 A. I worked fall routes up until '05
17 when I went to work in Bells.

18 Q. All right. Well --

19 A. So, it must have been the fall
20 route that I worked down in Texas.

21 Q. Have you seen this settlement
22 sheet before?

23 A. Yes, sir.

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1 Q. And is it, in fact, accurate?

2 A. The best I can tell, it probably
3 is.

4 Q. Now, when you wanted -- when you
5 decided to go to Bells to swap with Butch
6 Stewart, part of your reason for doing so was
7 that you would not have to run a fall route,
8 correct?

9 A. Would not have to run a fall
10 route and wouldn't have to run a long spring
11 route.

12 Q. And, generally, the longer your
13 spring route, the more opportunity you have
14 to make money?

15 A. No, sir.

16 Q. So far as not running a fall
17 route is concerned, if you don't run a fall
18 route, that cuts into your income, does it
19 not?

20 A. Yes, sir.

21 Q. And did you --

22 A. The reason that I had to make
23 that change is, I was making plans to have my

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1 knees and feet repaired.

2 Q. Have you sought to work a fall
3 route since then?

4 A. No, sir.

5 Q. Never asked anybody for the
6 opportunity to do that, correct?

7 A. No, sir.

8 Q. And you had an opportunity to run
9 a fall route in Beeville, did you not, this
10 past fall?

11 A. No, sir. Fall routes were filled
12 over there this fall.

13 Q. And nobody asked you to run a
14 fall route in Beeville --

15 A. No, sir.

16 Q. -- is that your testimony?

17 A. Yes, sir.

18 Q. Have you made any attempts to
19 calculate your damages in this case?

20 A. No, sir, I have no idea what my
21 damages would be or what to -- nobody's told
22 me anything about damages if you mean dollar
23 value --

Page 169

1 Q. That's right.

2 A. -- values.

3 Q. Have you made any --

4 A. I mean, I -- and I can't
5 calculate the physical and the working
6 damages. No way to calculate that.

7 Q. What do you mean by that?

8 A. When you've been mistreated, you
9 can't calculate in dollars and cents what
10 that has cost you --

11 Q. Well, have you made any --

12 A. -- that you can calculate in
13 dollars and cents what you would have made
14 against what you're making.

15 Q. Have you made any attempt to do
16 that?

17 A. No, sir, I've had no reason to.

18 MR. MORTON: Let's mark that.

19
20 (Whereupon, Defendant's Exhibit
21 11 was marked and copy of same is
22 attached hereto.)
23

43 (Pages 166 to 169)

FREEDOM COURT REPORTING

Page 166

1 MR. MORTON: And, Jerry, I just
 2 shot you a copy over there.
 3 Q. Is that your settlement sheet,
 4 your commission settlement sheet, for the
 5 spring of 2005?
 6 A. Fall, '04 and spring, '05. They
 7 added -- yeah, they started adding the fall
 8 sales then. I don't know where fall, '04
 9 came from, and I don't know where spring, '05
 10 came from.
 11 Q. Pardon me, sir?
 12 A. Where did fall, '04 come from?
 13 Q. Did you ever work a fall route?
 14 A. Yes, sir.
 15 Q. When?
 16 A. I worked fall routes up until '05
 17 when I went to work in Bells.
 18 Q. All right. Well --
 19 A. So, it must have been the fall
 20 route that I worked down in Texas.
 21 Q. Have you seen this settlement
 22 sheet before?
 23 A. Yes, sir.

Page 167

1 Q. And is it, in fact, accurate?
 2 A. The best I can tell, it probably
 3 is.
 4 Q. Now, when you wanted -- when you
 5 decided to go to Bells to swap with Butch
 6 Stewart, part of your reason for doing so was
 7 that you would not have to run a fall route,
 8 correct?
 9 A. Would not have to run a fall
 10 route and wouldn't have to run a long spring
 11 route.
 12 Q. And, generally, the longer your
 13 spring route, the more opportunity you have
 14 to make money?
 15 A. No, sir.
 16 Q. So far as not running a fall
 17 route is concerned, if you don't run a fall
 18 route, that cuts into your income, does it
 19 not?
 20 A. Yes, sir.
 21 Q. And did you --
 22 A. The reason that I had to make
 23 that change is, I was making plans to have my

Page 168

1 knees and feet repaired.
 2 Q. Have you sought to work a fall
 3 route since then?
 4 A. No, sir.
 5 Q. Never asked anybody for the
 6 opportunity to do that, correct?
 7 A. No, sir.
 8 Q. And you had an opportunity to run
 9 a fall route in Beeville, did you not, this
 10 past fall?
 11 A. No, sir. Fall routes were filled
 12 over there this fall.
 13 Q. And nobody asked you to run a
 14 fall route in Beeville --
 15 A. No, sir.
 16 Q. -- is that your testimony?
 17 A. Yes, sir.
 18 Q. Have you made any attempts to
 19 calculate your damages in this case?
 20 A. No, sir, I have no idea what my
 21 damages would be or what to -- nobody's told
 22 me anything about damages if you mean dollar
 23 value --

Page 169

1 Q. That's right.
 2 A. -- values.
 3 Q. Have you made any --
 4 A. I mean, I -- and I can't
 5 calculate the physical and the working
 6 damages. No way to calculate that.
 7 Q. What do you mean by that?
 8 A. When you've been mistreated, you
 9 can't calculate in dollars and cents what
 10 that has cost you --
 11 Q. Well, have you made any --
 12 A. -- that you can calculate in
 13 dollars and cents what you would have made
 14 against what you're making.
 15 Q. Have you made any attempt to do
 16 that?
 17 A. No, sir, I've had no reason to.
 18 MR. MORTON: Let's mark that.
 19
 20 (Whereupon, Defendant's Exhibit
 21 11 was marked and copy of same is
 22 attached hereto.)
 23

43 (Pages 166 to 169)

FREEDOM COURT REPORTING

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1 Q. (BY MR. MORTON) I'll show you
2 Defendant's Exhibit Number 11, which is a
3 copy of some documents that you produced
4 today in this spiral notebook.

5 A. All right, sir. This is just
6 where I was getting information on stores
7 that I've got to get into the computer. And
8 the way the stores -- the way I fixed up my
9 route to run it, with the store numbers on it
10 where I could write them down without, you
11 know, having to pull the computer sheet up to
12 find them.

13 Q. Do any of the documents in
14 here -- do you contend that any of the
15 documents in here support your claim of age
16 discrimination, any of the documents
17 contained in this exhibit?

18 A. The fact that I'm down there on
19 that route does. The fact that there is the
20 opportunity for less money to be made on that
21 route does.

22 One thing I see in these
23 documents is Bonnie said that I didn't attend

Page 171

1 a 2005 sales meeting. I was at the sales
2 meeting.

3 Q. And that was the 2005 sales
4 meeting in Auburn?

5 A. In Auburn, Alabama.

6 Q. All right.

7 A. You know, they even stopped
8 giving me my base pay. Why did they do that?

9 Q. When did they stop giving you
10 base pay?

11 A. In June or July of this year -- I
12 can't remember exactly when -- of '07.

13 Q. Is that when your --

14 A. Here it is.

15 Q. And they stopped giving you your
16 base pay, you say, in 2007?

17 A. Yes, sir.

18 Q. Or, rather, reduced your base
19 pay, right?

20 A. Reduced my base, yes, sir.

21 Q. And, in fact, the explanation
22 that you received from Mr. Stewart for that
23 was that you were -- that they were -- they

Page 172

1 were taking money out to pay for your
2 insurance, correct?

3 A. Yes, sir.

4 Q. And, in fact, if we -- as we've
5 seen, in 2007, you were upside down so far as
6 the company is concerned? Your draws
7 exceeded your commissions earned, right?

8 A. Yes, sir.

9 Q. All right. There's a statement
10 in this exhibit --

11 MR. MORTON: What exhibit is
12 this, 10? What's the last --

13 MR. ROBERSON: The first page
14 right there.

15 MR. MORTON: 11?

16 THE WITNESS: 11.

17 Q. (BY MR. MORTON) All right.
18 There's a page in here that's several pages
19 in that says, on February or around February
20 15th, Tim Trussell called about helper hours
21 of 101. He said he --

22 A. He justified that because I'd
23 been driving the truck seventy-nine hours.

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1 Q. What was the point of his call?

2 A. I didn't know, unless he thought
3 I was just trying to give a helper pay time
4 for no reason. And it just made me wonder if
5 I had made a mistake or something.

6 Q. Did Mr. Smith drive any of those
7 seventy-nine hours or did you drive them all?

8 A. I drove them all.

9 Q. And your testimony under oath is
10 Mr. Smith never drove your truck?

11 A. No, sir.

12 Q. No, sir, he did not?

13 A. My testimony is not -- that Mr.
14 Smith never drove my truck. He didn't drive
15 my truck during this period of time
16 (indicating).

17 Q. When did he drive your truck?

18 A. He drove my truck when I took my
19 morning pills instead of my night pills. And
20 he drove it on the log, and the log was
21 turned in.

22 Q. All right. What do you mean when
23 you took your morning pills instead of your

44 (Pages 170 to 173)

FREEDOM COURT REPORTING

Page 174

1 night pills?

2 A. I accidentally took the wrong pills
3 one day.

4 Q. Is that the only time he ever
5 drove your truck?

6 A. And he has driven around the
7 yard, and he's driven from the plant farm to
8 the house. But that's the only time he's
9 ever driven it on the route.

10 Q. Did you have permission for him
11 to drive it on the route that day?

12 A. Yes, sir.

13 Q. From who?

14 A. We had a form that we filled out
15 on him. And he is a legal driver.

16 Q. Was it correct that, as reflected
17 on this page of Exhibit 11 that we were
18 looking at a minute ago that references
19 February the 15th, was it true that, in fact,
20 you had a hundred and one helper hours and
21 only seventy-nine hours on the GPS?

22 A. Yes, sir.

23 Q. Why?

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1 A. Well, it takes time to load the
2 truck, unload the truck, and it takes time to
3 put racks up.

4 Q. What was the resolution of Mr.
5 Trussell's call to you? How did y'all leave
6 it?

7 A. He left it with it was possible
8 for him to have the hundred and one hours.

9 Q. Okay. So, after you explained,
10 he agreed with you?

11 A. Well, he -- I mean, he had it
12 right there in front of him. It wasn't --
13 when something comes up out of whack, they're
14 going to check it. And that came up out of
15 whack, and they checked it and it checked out
16 all right, which was -- you know, I'm
17 thankful for.

18 Q. So, his call to you, then, was
19 not anything out of the ordinary?

20 A. Well, yes, sir, it was out of the
21 ordinary for him to call me about what he
22 called me about. It concerned me. I
23 wouldn't have written it down.

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1 Q. Well, I thought --

2 A. But it was nothing to be -- it
3 was straightened out and resolved on the
4 phone.

5 Q. All right. And when something
6 unusual like that pops up, it's not unusual
7 for the driver to be called, correct?

8 A. Correct.

9 Q. Now, the seventy-nine hours here
10 that's reflected that you drove, was that all
11 reflected in your logbook?

12 A. No, sir.

13 Q. Why not?

14 A. It's illegal to put down that
15 number of hours in your logbook. If you put
16 your hours in your logbook, nine times out of
17 ten, you're going to be illegal. It's
18 just -- it's an illegal act that I performed
19 doing my duties for Bonnie Plant Farm.

20 Q. So, you falsified the logbook?

21 A. Yes, sir.

22 Q. Did you discuss that with anybody
23 at Bonnie?

Page 177

1 A. They pretty well understand about
2 it.

3 Q. No, the question was: Did you
4 discuss it with anybody?

5 A. Nobody ever said anything to me
6 about it. I didn't say it to any of them.
7 I've never heard them say, drive legal.

8 Q. Have you ever heard of them say
9 drive illegal?

10 A. I've heard them insinuate it.
11 I've heard them say it was good to go out and
12 unload a load and come back in and get
13 another load and go back out with it.

14 Q. But nobody ever told you to drive
15 illegal?

16 A. No, sir, nobody's ever told me to
17 drive illegal.

18 Q. And you've never told anybody
19 that you were driving illegal, nobody at
20 Bonnie; is that right?

21 A. No, sir. I'm sure that Bonnie
22 wouldn't stand behind you in the event that
23 you had a problem driving illegal like that,

45 (Pages 174 to 177)

FREEDOM COURT REPORTING

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1 but I'm sure that it'd be hard to stay on the
2 payroll if you didn't do it. You have a
3 certain number of hours that you can drive a
4 certain number of hours a day. And our work
5 time and our drive time doesn't coincide a
6 lot. And it's -- to me, it's not something
7 to be -- deny, be upset about, or --

8 Q. How many times did you falsify
9 the logbook?

10 A. Probably every time I turned one
11 in.

12 Can you write down your hours
13 what you do all day?

14 Q. I do. I have to.

15 A. Well, you're a good man. Do you
16 ever falsify yours? I didn't mean that. I
17 didn't mean that.

18 Q. No, sir, I don't.

19 A. I didn't mean that. But, I mean,
20 ours is a little different.

21 MR. ROBERSON: According to his
22 time sheets, it's a hundred and four.

23 MR. MORTON: Now, that's not

Page 180

1 A. They made a statement that Butch
2 was just going into a town and saw a store
3 sitting up on a hill and went up and opened
4 it up and got sixteen thousand dollars out of
5 it. That store that was sitting up on that
6 hill, I was working a store that belonged to
7 the same company in a different location in
8 the town. And I had been trying to get into
9 that store and couldn't. And I told Butch
10 that he'd probably have no problem getting
11 into that store. That the garden center
12 manager from the store that I was working at
13 was going to be the garden center manager in
14 that store the next year. And it was a real
15 good plant store.

16 Q. Well, what was said about you in
17 this 2005 sales meeting?

18 A. That I was just riding by the
19 store and never went by there and never saw
20 it, just never paid any attention to it.

21 Q. And you say Butch Stewart said
22 that?

23 A. No, sir, that was kindly

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1 true. I'm only ninety-six.

2 Q. No. We don't do that. I don't
3 do it. He doesn't do it. We've seen people
4 in our profession come to serious grief over
5 that.

6 MR. MORTON: Hadn't we?

7 MR. ROBERSON: I'm certain that's
8 true.

9 A. Well, it -- you know, it happens
10 with us. But I'm not -- I'm not trying to
11 shove it off. But I'm trying to be honest
12 with you, sir.

13 Q. (BY MR. MORTON) Good. Well, I
14 appreciate your being honest.

15 There's reference in here about
16 the 2005 sales meeting. It says, my name and
17 an example of my bad work was put in the
18 meeting by Butch Stewart. He will admit that
19 the example he gave was charged by his
20 brother, Joe, to make him look better than
21 me. But according to dollars in sales, that
22 would be debatable. What's that a reference
23 to?

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1 insinuated in there.

2 Q. Well, my point is, was your --
3 did your name actually even come up in that
4 sales meeting? Did anybody mention your name
5 in that sales meeting?

6 A. No, sir.

7 Q. There's also a statement, in
8 2006, showed --

9 A. Deliveries and not sales.

10 Q. What does that mean?

11 A. Do you have a copy of the
12 exhibit?

13 MR. ROBERSON: It's the EEOC
14 response.

15 A. EEOC response.

16 MR. ROBERSON: Bonnie Plant's
17 EEOC response.

18 A. These are just notes that I wrote
19 down today when I read that response. I
20 don't keep notes. I don't keep a log. I
21 don't --

22 Q. (BY MR. MORTON) Now, when you're
23 talking about in response in putting down for

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<p>1 2006 deliveries rather than sales, do you 2 mean that the number that was shown was not 3 the number you actually collected? 4 A. Yes, sir. 5 Q. And, in fact, in the chain 6 stores, the payment's automatic, right? 7 A. Yes, sir. 8 Q. And with respect to other stores, 9 it's your responsibility to collect the 10 money, correct? 11 A. Yes, sir. 12 Q. And the difference between 13 deliveries and sales would be the difference 14 between -- would be money that you didn't 15 collect; is that right? 16 A. We put plants in -- we're only 17 paid for what sells. Our gross deliveries 18 are higher than our sales figures. 19 Q. Okay. But, again -- 20 A. These people -- I've worked for 21 some smart people. They learn if you keep 22 those plants out there, somebody's going to 23 buy them. And if you've got them out there</p>	<p>1 big routes, it looks like. 2 A. Yes, sir. 3 Q. What's that a reference to? 4 A. Well, it's just something that 5 came to my mind when I was sitting down and 6 thinking about, you know, how I had been 7 mistreated through the years. And it -- when 8 it -- when he did that, he sent me all the 9 way to the edge of Mississippi to Ferriday, 10 Louisiana. And when I'd get over there and 11 get out the plants, I'd have to drive back 12 all the way across the State of Louisiana 13 into east Texas to get another load. And I 14 just felt like that, you know, he could have 15 figured out another way to have done things. 16 But he didn't. And, you know, I'm satisfied. 17 I'm happy with everything except for being -- 18 you know, getting to the age that I am now 19 and them feeling like, well, we'll just kick 20 him out the door. 21 Q. You're not contending that what 22 Mr. Rainer did in 2000 was age 23 discrimination, are you?</p>
Page 183	Page 185
<p>1 at the right time, they're really going to 2 buy them. 3 Q. The question, though, is, the 4 difference between deliveries and sales, is 5 that the difference between -- I mean, is 6 that money that you are responsible for 7 collecting and didn't? 8 A. No, sir. 9 Q. Okay. 10 A. It's the difference in the amount 11 of plants that you put out and what actually 12 sells. 13 MR. ROBERSON: They can return 14 the plants they don't sell. 15 MR. STEWART: Consignment. 16 Q. (BY MR. MORTON) Okay. You're 17 saying that the figure that appears on the 18 EEOC response was deliveries, not sales? 19 A. They gave sales in all but one. 20 And one, they put deliveries. 21 Q. Okay. Then, you say, around 22 2000, my route was divided into three routes. 23 Bill Rainer told me there would be no more</p>	<p>1 A. No, sir. 2 Q. Now, there's indication in this 3 exhibit that less money makes it harder to 4 pay your bills. 5 A. Yes, sir. 6 Q. Have you lost a car or a house or 7 a boat or anything like that as a result of 8 them reducing your pay? 9 A. I went into my 401(k) and got 10 moneys out of it to offset the difference. 11 Q. All right. The question is, did 12 you lose any property? 13 A. I lost money, actual dollars, out 14 of my 401(k) to pay my bills with. 15 Q. But that's not the question I'm 16 asking you. Did you lose a car, a house, a 17 trailer, a piece of property, anything that 18 you were paying for on time? 19 A. No, sir. 20 Q. How much money did you borrow 21 from your 401(k)? 22 A. I got ten thousand dollars. 23 Q. When?</p>

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1 A. I'd have to see the paperwork on
 2 it to remember. Probably November of '07.
 3 Q. November of 2007?
 4 A. Yes, sir.
 5 Q. Is that the only loan you've
 6 taken out from your 401(k)?
 7 A. Yes, sir.
 8 Q. Have you borrowed any other money
 9 from any other source?
 10 A. No, sir. I use regular credit
 11 cards to pay my drug bill with, and I try to
 12 get that money to turn around and pay. And
 13 it's hard -- it's hard to do, because I take
 14 a lot of drugs, as you can see.
 15 Q. Your health insurance doesn't pay
 16 for your drugs?
 17 A. Yes, sir.
 18 Q. It does?
 19 A. Yes, sir, on the -- on the turn
 20 around. See, I've got big deductibles the
 21 first of the year coming up. And I got
 22 behind on them. But I have to pay for the
 23 drugs, and then, they -- then, the company

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1 reimburses me for the drugs.
 2 Q. And they've been reimbursing you,
 3 correct?
 4 A. Yes, sir, I've had no problem.
 5 MR. MORTON: Let's go off the
 6 record for a few minutes.
 7
 8 (Whereupon, a brief recess was
 9 taken.)
 10
 11 Q. (BY MR. MORTON) We were talking
 12 about the schools and churches earlier.
 13 Weren't you supposed to do those things first
 14 thing, early in the year?
 15 A. Well, as a normal -- normally,
 16 that's the first thing you start doing.
 17 Q. Well, why didn't you do it first
 18 thing this year?
 19 A. Well, when I got down there, they
 20 suggested I put the racks up and start
 21 putting the plants in the stores.
 22 Q. And that was after you'd come
 23 back to Alabama --

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1 A. Yes, sir.
 2 Q. -- and drove back out there?
 3 A. And this is the first year I've
 4 ever been late. And --
 5 Q. Can you name any of the schools
 6 that you have a contract with?
 7 A. Orange Grove, Skidmore, Saretha.
 8 I can't think of anymore of them that I have.
 9 I think I've got --
 10 Q. Has Mr. Hall talked to you about
 11 slow sales in your territory?
 12 A. No, sir.
 13 Q. Hadn't said a word to you about
 14 that?
 15 A. No, sir.
 16 Q. Has he criticized any aspect of
 17 your performance?
 18 A. Yes, sir.
 19 Q. And what aspect is that?
 20 A. Being late getting out there,
 21 having to leave to come up here for this. I
 22 needed to get the information they wanted in
 23 on these stores.

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1 Q. Did he criticize you about the
 2 school and church programs?
 3 A. Yes, sir, he wants to get those
 4 done.
 5 Q. Anything else?
 6 A. I can't think of anything else
 7 right off the bat.
 8 Q. Any of those criticisms
 9 unjustified as far as you're concerned?
 10 A. Not one that I can think of.
 11 Like I say, I've always tried to do what they
 12 told me to do when they told me to do it.
 13
 14 (Whereupon, a discussion was held
 15 off the record.)
 16
 17 Q. (BY MR. MORTON) All right. I'm
 18 looking at a document called Plaintiff's
 19 Initial Disclosures. And one of the things
 20 that this document does, is it lists the name
 21 of people who may have knowledge about facts
 22 related to the case. One of the people
 23 you've listed on here is Johnny Roy

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1 Fendelson. What do you think he knows --
 2 A. He knows --
 3 Q. -- or may have knowledge about
 4 this case?
 5 A. -- that I've filed it.
 6 That's all.
 7 Q. He doesn't know anything else?
 8 A. I don't -- I don't know what else
 9 he knows.
 10 Q. Have you talked to him about the
 11 case?
 12 A. No, sir.
 13 Q. Have you put him in touch with
 14 your counsel?
 15 A. No, sir.
 16 Q. It says, Tony, last name unknown,
 17 Bells, Tennessee. Is that Tony Brown?
 18 A. It must be Tony Brown.
 19 Q. What do you think Mr. Brown knows
 20 about the case?
 21 A. Just that I filed it probably.
 22 Q. He doesn't know anything about
 23 any facts that support your claims or

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1 anything of that nature?
 2 A. No, sir.
 3 Q. The same question for Mr.
 4 Fendelson.
 5 A. The same. The same.
 6 Q. Same answer?
 7 A. I hadn't really known what to
 8 discuss with anybody.
 9 Q. You've listed Adam Alley. What
 10 do you think he knows about your claims?
 11 A. I don't remember listing Adam.
 12 But I think that it would be hearsay what I'd
 13 have to say what he knows. And if you want
 14 to hear what somebody told me, I'll tell you.
 15 Q. That's what I want to hear.
 16 A. Somebody told me that they heard
 17 him and Eric Rankin in the office laughing
 18 one morning. And he was laughing about the
 19 letter I had written asking for my job back.
 20 And I don't know that he ever even saw that
 21 letter or not.
 22 Q. Who told you that?
 23 A. Michael Rhodes.

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1 Q. Alley and Michael Rankin?
 2 A. Eric.
 3 Q. Eric Rankin. Laughing in the
 4 office about the letter you wrote. And that
 5 letter would be this January 10th letter?
 6 A. Yes, sir, the one asking for my
 7 job back. I don't even know whether he even
 8 got a copy of the letter or not.
 9 Q. And what was the fellow's name
 10 who told you this?
 11 A. Michael Rhodes.
 12 Q. And who is he?
 13 A. He's my helper from that year.
 14 And he just -- he called me, asking me about
 15 it.
 16 Q. When?
 17 A. It's been a long time ago.
 18 Q. Michael Rhodes called you and
 19 asked about it?
 20 A. Uh-huh.
 21 Q. What did he say to you?
 22 A. He just said he heard Adam and
 23 them in there laughing about some kind of

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1 letter I had wrote asking for my job back.
 2 Q. Where's Michael now?
 3 A. I don't really know. He lives up
 4 there near Bells.
 5 Q. What did you tell him?
 6 A. I told him, yeah, I was trying to
 7 get back up there. And he said, I sure hope
 8 you do.
 9 Q. So, this would have been sometime
 10 in early 2006?
 11 A. Yes, sir, this would have been in
 12 that time.
 13 Q. And Michael Rhodes was your
 14 helper, meaning, somebody hired -- that you
 15 hired to work on the truck?
 16 A. Yes, sir.
 17 Q. Did he ever drive a truck for
 18 you?
 19 A. No, sir.
 20 Q. Not one time?
 21 A. No, sir.
 22 Q. Anything else Michael Rhodes said
 23 to you or you said to him in that

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1 conversation?
 2 A. I'm sure we talked about other
 3 things, but that was all that I know of that
 4 was said about that.
 5 Q. All right. What else do you
 6 think Adam Alley knows that relates to your
 7 claim?
 8 A. I don't know of anything that --
 9 I don't really know.
 10 Q. You don't know of anything else
 11 he knows?
 12 A. No, sir.
 13 Q. Nobody's told you anything else?
 14 A. No, sir.
 15 Q. What about Joseph Padgett? He
 16 was your boss in Jasper?
 17 A. Uh-huh.
 18 Q. Is that correct?
 19 A. That's correct.
 20 Q. What do you believe he knows that
 21 relates to your complaints?
 22 A. Probably that it's been filed
 23 would be the only thing I know that he knows.

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1 He never discussed it with me.
 2 Q. And you've never discussed it
 3 with him?
 4 A. No, sir.
 5 Q. And you never discussed age
 6 discrimination with him?
 7 A. No, sir.
 8 Q. Was he ever critical of your job
 9 performance?
 10 A. Yes, sir. He said I needed to
 11 leave more six packs in some places that --
 12 that they were big six pack sellers.
 13 Q. Was that criticism justified?
 14 A. Yes, sir.
 15 Q. Did you leave more six packs?
 16 A. Yes, sir. Yes, sir, it was very
 17 much so justified.
 18 Q. And was he ever critical of your
 19 job performance in any other way?
 20 A. Not face to face in any way, no.
 21 Q. Do you know of any criticisms he
 22 made to anybody else?
 23 A. No, sir.

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1 Q. Did Adam Alley ever criticize you
 2 for not keeping your truck clean --
 3 A. No, sir.
 4 Q. -- or not keeping your racks
 5 organized?
 6 A. No, sir.
 7 Q. Did he ever criticize you for not
 8 picking up old product in a timely manner?
 9 A. No, sir. He -- that's all right.
 10 Q. I'm sorry?
 11 A. No, sir, he never criticized me
 12 for any of that.
 13 Q. You list Donald Christopher Hall.
 14 That would be Chris Hall, right?
 15 A. Yes, sir.
 16 Q. He's the station manager in
 17 Beeville?
 18 A. Yes, sir.
 19 Q. What do you believe he knows that
 20 might be relevant to your case?
 21 A. Nothing but it's filed.
 22 Q. Was he ever critical of your job
 23 performance in any way beyond what we've

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1 talked about today?
 2 A. No, sir. He told me that I
 3 didn't cost him any money last year.
 4 Q. Did you make him any?
 5 A. No, sir, but I don't believe any
 6 money's ever been made on that route that I
 7 was on. If they can show a profitable
 8 year -- everybody that has worked that
 9 route -- well, I can't say everybody. I know
 10 Alberto had that route, and he went into the
 11 hole. And he was trying to work his way out
 12 of it.
 13 Q. But you don't know whether
 14 anybody's made a profit on that route or not,
 15 right?
 16 A. No, sir.
 17 Q. Charlie Trussell he was station
 18 manager at Donaldsonville?
 19 A. Yes, sir.
 20 Q. What do you believe he knows that
 21 might be relevant to your case?
 22 A. Nothing.
 23 Q. Nothing at all?

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<p>1 A. Nothing at all.</p> <p>2 Q. Did he ever do anything that you</p> <p>3 thought was discriminatory, Mr. Trussell?</p> <p>4 A. No, sir.</p> <p>5 Q. How about Bill Rainer, you've</p> <p>6 listed him. What do you think he knows that</p> <p>7 might be relevant to your claims?</p> <p>8 A. Nothing but that it's filed. I</p> <p>9 think he would know that a claim had been</p> <p>10 filed.</p> <p>11 Q. Anything else?</p> <p>12 A. That's all.</p> <p>13 Q. How high up is the bed of your</p> <p>14 truck from the ground; do you know?</p> <p>15 A. The bed of the truck?</p> <p>16 Q. Right.</p> <p>17 A. When you walk up to it, it hits</p> <p>18 you about there (indicating), if you're my</p> <p>19 size, my height.</p> <p>20 Q. So, it would be what,</p> <p>21 somewhere --</p> <p>22 A. Three and a half, four feet.</p> <p>23 Q. Let's see. You're six one. That</p>	<p>1 Q. -- right?</p> <p>2 And never had a problem that</p> <p>3 you --</p> <p>4 A. No, sir.</p> <p>5 Q. -- of any significance?</p> <p>6 MR. MORTON: I'll object to your</p> <p>7 leading him.</p> <p>8 MR. ROBERSON: Please do.</p> <p>9 MR. MORTON: No, I mean, do you</p> <p>10 want to give me a standing objection or do</p> <p>11 you want me to object to every question?</p> <p>12 MR. ROBERSON: Whatever you want.</p> <p>13 Whatever is easier for you.</p> <p>14 Q. And in those twenty something</p> <p>15 years, how many routes did you have?</p> <p>16 A. I had two routes until I went to</p> <p>17 Bells, Tennessee.</p> <p>18 Q. Okay. Now, when you got</p> <p>19 transferred to Bells, Tennessee, at whose</p> <p>20 request was that?</p> <p>21 A. That was my request.</p> <p>22 Q. You wanted a shorter route?</p> <p>23 A. I wanted a shorter route, and</p>
Page 199	Page 201
<p>1 hits you --</p> <p>2 A. I want to say somewhere around</p> <p>3 here (indicating).</p> <p>4 Q. -- the middle of your chest?</p> <p>5 Have you ever measured it?</p> <p>6 A. No, sir.</p> <p>7 MR. MORTON: I don't believe I've</p> <p>8 got anything else.</p> <p>9 MR. ROBERSON: I've got a few</p> <p>10 questions.</p> <p>11 EXAMINATION BY MR. ROBERSON:</p> <p>12</p> <p>13 Q. Mr. Watson, you go by Terry,</p> <p>14 don't you?</p> <p>15 A. That's right.</p> <p>16 Q. I want to talk about two periods</p> <p>17 of time. I want to talk about up until you</p> <p>18 had your knee surgery. That'd be knee</p> <p>19 surgery in the fall of 2005. You worked for</p> <p>20 this -- for Joe Stewart and for AFC for over</p> <p>21 twenty years --</p> <p>22 A. Yes, sir.</p> <p>23</p>	<p>1 Butch wanted a --</p> <p>2 Q. Longer route?</p> <p>3 A. -- longer route.</p> <p>4 Q. Okay. And so, you initiated --</p> <p>5 you and Butch initiated that transaction?</p> <p>6 A. We initiated it together.</p> <p>7 Q. Before the fall of 2005, had</p> <p>8 AFC -- I call them Bonnie Plant. But had</p> <p>9 the -- had the company you worked for ever</p> <p>10 transferred you involuntarily?</p> <p>11 A. No, sir.</p> <p>12 Q. Had they ever written you up or</p> <p>13 disciplined you?</p> <p>14 A. No, sir.</p> <p>15 Q. Did y'all have any kind of a</p> <p>16 formal written evaluation as to your job</p> <p>17 performance, your supervisor come and sit</p> <p>18 down with you and go over some annual job</p> <p>19 performance?</p> <p>20 A. I never saw one.</p> <p>21 Q. Okay. But they had incentives,</p> <p>22 sales incentives, right?</p> <p>23 A. Right.</p>

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<p>1 Q. The whole time you worked there, 2 you had been on a commission, right? 3 A. Right. 4 Q. And you get a draw that offsets 5 the commission -- 6 MR. MORTON: Object to the form. 7 A. That's right. 8 Q. (BY MR. ROBERSON) -- correct? 9 I mean, a draw against the 10 commission? 11 A. A draw against commission, right. 12 Q. So, your income, Terry, what 13 shows up on your W-2, is not -- is not ever 14 what you actually earned that year; is that 15 correct? 16 A. That's correct. 17 MR. MORTON: Object to the form. 18 Q. (BY MR. ROBERSON) In other 19 words, you get on your W-2, let's say for 20 2005, are the draws you received during 2005, 21 correct? 22 A. Correct. 23 Q. And then, you get the commission,</p>	<p>1 compensation at Bonnie Plant, does it change 2 from time to time? 3 A. It changes every year. 4 Q. And so, the percentage of 5 commission, everything else may change from 6 year to year? 7 A. Yes, sir. 8 Q. And the goals -- there's a 9 breakdown on the commission, isn't there? 10 Don't you have to exceed a sales goal -- 11 A. Yes, sir. 12 Q. -- to get a higher commission 13 rate? 14 A. To get a higher percentage. 15 Q. So, that's going to change every 16 year? 17 A. It's going to change every year. 18 Q. And I'm guessing, now, but I'm 19 guessing it don't get lower, your sales goal, 20 it gets higher? 21 A. It gets higher. 22 MR. MORTON: Object to the form. 23 Q. (BY MR. ROBERSON) All right.</p>
Page 203	Page 205
<p>1 the settlement statement, if you earned any 2 commission, you get that from 2004 in 2005 -- 3 MR. MORTON: Object to the -- 4 Q. (BY MR. ROBERSON) -- right? 5 MR. MORTON: Object to the form. 6 Q. (BY MR. ROBERSON) Is that right? 7 A. That's right. 8 Q. And so, that means that your 9 earnings were at least always partially 10 trailing the next year? 11 A. Yes, sir. 12 Q. Correct? 13 A. Yes, sir. 14 Q. So, when you told the EEOC you 15 earned forty-five thousand, you would have 16 gotten part of that in 2006, that income? 17 A. That's correct. 18 MR. MORTON: Object to the form. 19 Q. (BY MR. ROBERSON) You would have 20 received that in the next year, your 21 commission income? 22 A. That's correct. 23 Q. Okay. And they've got a -- the</p>	<p>1 Well, I'm going to -- and is this -- 2 MR. ROBERSON: Dent, did you make 3 this an exhibit (indicating)? That's 2000 -- 4 you gave it to me. 5 MR. MORTON: Yes. 6 MR. ROBERSON: Can you find that 7 for me? I want to keep the number and ask 8 him about it. 9 Q. Oh, here we go. It's Exhibit 10, 10 Terry. Let me show you what Mr. -- 11 MR. MORTON: Morton. 12 Q. (BY MR. ROBERSON) -- Morton, 13 excuse me, marked as Exhibit 10. 14 And this shows commission for the 15 spring of 2005. And you are Arthur T. 16 Watson, right? 17 A. That's me. 18 Q. Okay. And where were you working 19 in the spring of 2005? 20 A. I was working in Bells, 21 Tennessee. 22 Q. Okay. And -- 23 A. In the fall, I was working in --</p>

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1 Q. All right. Well, look here
2 for what it says the collected sales were in
3 the spring of 2005. Can you read what that
4 figure is on Exhibit 10?
5 A. Three thirty-six.
6 Q. Oh, that's the fall and -- I'm
7 just -- I'm just -- I'm asking you the
8 spring, just that figure. I may be asking
9 you something you can't see.
10 A. The collected figure for the
11 spring --
12 Q. Yeah.
13 A. -- was 302,703.95.
14 Q. So, does that means you sold
15 three hundred -- over three hundred thousand
16 dollars worth of plants, collected the money
17 for them?
18 A. Yes, sir.
19 Q. All right. And it shows that you
20 got twelve percent of sales. That's the
21 first part of your commission --
22 A. Yes.
23 Q. -- right?

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1 And it shows -- you've got some
2 additional compensation. I'm assuming that's
3 because you were over the sales goal. That's
4 the way that worked, right?
5 A. Yes, sir. If you go over the
6 sales goal, you get paid more money.
7 Q. So, you get a base commission up
8 to the sales goal, correct?
9 A. You get a base pay.
10 Q. Okay.
11 A. And you get a base commission up
12 to dollar collected, and then, the commission
13 goes higher for more dollars.
14 Q. Okay. Now, in the spring of
15 2004, you also -- that was the first year you
16 worked in Bells, right?
17 A. Right.
18 Q. And it shows how much you
19 collected that year on the second page of
20 this document, Exhibit 10. And that's two
21 hundred and fifty-three thousand, right?
22 A. Yes, sir. They took two stores
23 off of my route that year to go into '5.

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1 They took a nice big, good selling Wal-Mart
2 and a Kmart off of it.
3 Q. Okay. But in 2004, the spring,
4 you sold two hundred fifty -- over two
5 hundred and fifty thousand dollars worth of
6 plants?
7 A. Yes, sir.
8 Q. And here, you actually got
9 sixteen percent of collected sales. So,
10 that's what we're talking about. Over here,
11 it was twelve percent, see, in 2005; is that
12 right?
13 A. That's right.
14 Q. Okay. Now, so, if you had the
15 same route -- same route number, even though
16 I understand it changed a little bit, you
17 grew the route from 2004 to 2005 by over
18 fifty thousand dollars, correct?
19 A. Correct.
20 Q. And that'd be over twenty
21 percent?
22 A. That would be over twenty
23 percent.

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1 Q. Okay. So, those were the numbers
2 you were making on the short route. And you
3 asked for the short route --
4 A. Yes, sir.
5 Q. -- to make it easier with your --
6 as you got older and had health problems, it
7 would be less demanding, less hours for you
8 to work?
9 A. Yes, sir.
10 Q. All right. Now, after your knee
11 surgery -- Tate is the safety --
12 A. Safety director.
13 Q. Safety director. And so, any
14 medical condition you have, you have to get
15 his approval to go back driving a truck?
16 A. Right.
17 Q. Is that right?
18 A. That's right.
19 Q. Does he work with you about your
20 health -- your cards and everything?
21 A. He does the drug test, and he
22 checks your health cards and --
23 Q. And I know you didn't directly

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1 report to Tate -- I mean, he wasn't over
 2 sales, but if you wanted to work, you had to
 3 have that card --
 4 A. Yes.
 5 Q. -- right?
 6 MR. MORTON: Object to the form.
 7 A. If you don't pass the physical
 8 examination and the drug test, you can't go
 9 to work.
 10 Q. (BY MR. ROBERSON) You ain't
 11 working, are you?
 12 All right. So, because of your
 13 surgeries in the fall, you had to go back
 14 through Tate; is that right?
 15 A. That's right.
 16 MR. MORTON: Object to form.
 17 Q. (BY MR. ROBERSON) Did he have
 18 any say-so?
 19 A. Yes, sir, he --
 20 Q. He had to clear you?
 21 A. He had to clear it. He had to
 22 clear it --
 23 MR. MORTON: Object to the form.

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1 A. -- whether you passed or failed.
 2 Q. (BY MR. ROBERSON) All right.
 3 And so, while that process is ongoing, you
 4 went to the sales meeting in Auburn, right,
 5 in 2005?
 6 A. Right.
 7 Q. The one that Bonnie Plant told
 8 the EEOC you didn't go to --
 9 A. Yes, sir.
 10 Q. -- right?
 11 That's a lie, isn't it?
 12 MR. MORTON: Object to the form.
 13 A. Yes, sir.
 14 Q. (BY MR. ROBERSON) And then, in
 15 November, you had a discussion with Joe
 16 Stewart, right?
 17 A. Right.
 18 Q. And that's when you found out you
 19 weren't going back to --
 20 A. Going back to Bells, Tennessee.
 21 Q. -- Bells?
 22 Okay. And that's the first time
 23 you mentioned the words "age discrimination",

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1 correct?
 2 MR. MORTON: Object to the form.
 3 A. Correct.
 4 Q. (BY MR. ROBERSON) Didn't you
 5 have a conversation with Joe?
 6 A. Yes, sir.
 7 Q. Did you tell him any -- did you
 8 make any complaint about what you perceived
 9 to be what could be age discrimination?
 10 A. I sure did.
 11 MR. MORTON: Object to the form.
 12 Q. (BY MR. ROBERSON) Okay. So,
 13 that's your first protected activity. Do you
 14 know what a protected activity is?
 15 A. No, sir.
 16 Q. Okay. Well, then, you gave these
 17 two letters -- January and February, you gave
 18 those two letters to Tate, right?
 19 A. Right.
 20 Q. And you were doing that because
 21 he had to approve you going back to driving a
 22 truck, right?
 23 A. Right.

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1 Q. He's not your up-line supervisor,
 2 but if he told you to do something, you had
 3 to do it?
 4 A. You had to do it.
 5 Q. In the spring season in Bells,
 6 Tennessee, you don't start work until
 7 sometime in late February, do you, or --
 8 MR. MORTON: Object to the form.
 9 Q. (BY MR. ROBERSON) What time do
 10 you start work?
 11 A. Mid February to late February.
 12 It depends on the weather that year.
 13 Q. Okay. Well, you got cleared from
 14 your doctor to go to full duty before the
 15 season started; is that correct?
 16 MR. MORTON: Object to the form.
 17 A. That's correct.
 18 Q. (BY MR. ROBERSON) And Joe -- I'm
 19 sorry. Leslie Branum took your route; is
 20 that correct?
 21 A. That's correct.
 22 MR. MORTON: Object to the form.
 23 Q. (BY MR. ROBERSON) I'm going to

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<p>1 show you --</p> <p>2 MR. ROBERSON: I don't think</p> <p>3 you've marked this one. Have you got a</p> <p>4 plaintiff's sticker?</p> <p>5 This is AFC Document 00626. It's</p> <p>6 something y'all produced this week, marked</p> <p>7 confidential.</p> <p>8 Q. So, don't tell anybody about it,</p> <p>9 Terry.</p> <p>10 MR. ROBERSON: Mark that</p> <p>11 Plaintiff's 1, please, ma'am.</p> <p>12</p> <p>13 (Whereupon, Plaintiff's Exhibit 1</p> <p>14 was marked and copy of same is</p> <p>15 attached hereto.)</p> <p>16</p> <p>17 Q. (BY MR. ROBERSON) All right.</p> <p>18 I'm going to show you a document that Bonnie</p> <p>19 Plant Farms made available to me shortly</p> <p>20 before your deposition and show you what</p> <p>21 Leslie Branum, his commissions for the spring</p> <p>22 of 2006. Do you see what number he collected</p> <p>23 working your route?</p>	<p>1 A. Right.</p> <p>2 MR. MORTON: Object to the form.</p> <p>3 Q. (BY MR. ROBERSON) Was that</p> <p>4 voluntary? Did you want to go there?</p> <p>5 A. No, sir.</p> <p>6 Q. They told you to go?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Were you on a commission?</p> <p>9 A. No, sir.</p> <p>10 Q. Had you always been on a</p> <p>11 commission?</p> <p>12 A. Yes, sir.</p> <p>13 Q. That's a difference, isn't it,</p> <p>14 after your complaint of discrimination,</p> <p>15 right?</p> <p>16 A. Right.</p> <p>17 Q. Well, do you know what -- have</p> <p>18 you -- what this -- these figures are in</p> <p>19 Exhibit 1, do you know how they calculated</p> <p>20 that for the route you ultimately took over</p> <p>21 in Jasper in 2006?</p> <p>22 A. No, sir.</p> <p>23 Q. Did you work the route from its</p>
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<p>1 A. Working my route.</p> <p>2 MR. MORTON: Object to the form.</p> <p>3 Q. (BY MR. ROBERSON) Do you see</p> <p>4 that? What is that number?</p> <p>5 A. 378,622.05.</p> <p>6 Q. And what were his gross</p> <p>7 commissions for that year, right there, that</p> <p>8 number (indicating)?</p> <p>9 A. Eighty-two thousand, a hundred</p> <p>10 and seventy-eight dollars and thirty-four</p> <p>11 cents.</p> <p>12 Q. Now, you don't know that he had</p> <p>13 the same route you had, correct? You don't</p> <p>14 know --</p> <p>15 A. I don't know that.</p> <p>16 Q. You don't know what stores he had</p> <p>17 on his route?</p> <p>18 A. No, sir.</p> <p>19 Q. Let me show you what's been</p> <p>20 marked as Defendant's Exhibit 1, which is</p> <p>21 your sales for the spring of 2006. And,</p> <p>22 first of all, Terry, you got sent to</p> <p>23 Louisiana, right?</p>	<p>1 beginning, when the season opened, till the</p> <p>2 end of the season?</p> <p>3 A. No, sir.</p> <p>4 Q. So, you didn't have an</p> <p>5 opportunity to run the whole route, did you?</p> <p>6 A. No, sir.</p> <p>7 Q. Do you know how they figured what</p> <p>8 you did on that route?</p> <p>9 A. No, sir, I have no idea.</p> <p>10 Q. Okay. Well, we know what they</p> <p>11 paid a commission on on that route, or what</p> <p>12 they claim the commission was, was a hundred</p> <p>13 and seventy-three thousand dollars, right?</p> <p>14 A. Right.</p> <p>15 Q. Now, before these transfers two</p> <p>16 times after your complaint, had you ever not</p> <p>17 made -- gone in the hole on your commission?</p> <p>18 A. I had never gone in the hole on</p> <p>19 my commission.</p> <p>20 Q. In other words, your commission</p> <p>21 was always more than your draw?</p> <p>22 A. I always got a check.</p> <p>23 Q. And these draws they're claiming</p>

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<p>1 that they paid you too much, did they take 2 out when you were working just on a draw; do 3 you know? 4 A. I don't know. 5 Q. Well, that don't hardly seem 6 right if they didn't, does it? 7 MR. MORTON: Object to the form. 8 Q. (BY MR. ROBERSON) I mean, how 9 can you -- 10 A. It's sure not right. 11 Q. Now, let me show you Exhibit 3, 12 which is your -- you ain't ever seen this 13 document till you got over here, had you? 14 A. No, sir. 15 Q. Have you got your W-2 yet for 16 2007? 17 A. No, sir. 18 Q. What's today's date? March 25th? 19 A. March 25th. 20 Q. Huh. Got your settlement 21 statement for 2007? 22 A. No, sir. 23 Q. Okay. Mr. Morton's got it,</p>	<p>1 don't they? 2 A. Yes, sir. 3 Q. And that sends a signal when 4 you're moving and when you're not, right? 5 A. Yes, sir. 6 Q. They know your location. They 7 know how many hours you work and drive the 8 truck, don't they? 9 A. Yes, sir. 10 Q. And they can compare how many 11 hours your truck's moving to your logbook if 12 they were really interested in that, couldn't 13 they? 14 A. Yes, sir. 15 Q. In your twenty something years at 16 Bonnie Plant Farms, has anybody ever 17 disciplined you for working too many hours? 18 A. No, sir. 19 Q. You work on a commission, don't 20 you? 21 A. Yes, sir. 22 Q. If you don't sell, you don't eat, 23 right?</p>
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<p>1 apparently. 2 MR. MORTON: Object to the side 3 bar, Counsel. Ask questions. Don't make 4 comments. 5 Q. (BY MR. ROBERSON) Well, do you 6 see what net collected sales for 2007 are, 7 one thirty-three -- 8 A. One thirty-three thousand, eight 9 hundred and eighty-five dollars and fifty 10 cents. 11 Q. Okay. Now, the route you're 12 working in Texas, or you worked in 2007, is 13 that a long route or a short route? 14 A. That's a long route. 15 Q. The kind of route you asked to 16 get off of? 17 A. The kind of route I would like to 18 get off of. 19 Q. Okay. And, in fact, they know -- 20 Bonnie Plant knows every hour that that truck 21 is being operated, don't they? 22 A. Yes, sir. 23 Q. They've got a GPS in that truck,</p>	<p>1 A. Right. 2 Q. In fact, do you have any idea how 3 many million dollars of plants you've sold 4 for Joe Stewart and Bonnie Plant Farms? 5 A. No idea at all. 6 Q. Well, you'd think that working 7 for a guy for twenty something years and 8 making him a bunch of money, that he'd be 9 loyal to you; wouldn't you think that? 10 MR. MORTON: Object to the form. 11 A. I would have thought that. 12 Q. (BY MR. ROBERSON) Well, he ain't 13 done you any favors since you complained of 14 age discrimination, has he? 15 MR. MORTON: Object to the form. 16 A. No, sir, he has not. 17 Q. (BY MR. ROBERSON) He's put you 18 on four routes -- 19 MR. STEWART: This is bullshit. 20 MR. MORTON: Well, just calm 21 down. 22 MR. STEWART: I was trying to 23 give this boy a job to where he could draw a</p>

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1 check, and I'll be goddamned if I'm going to
2 sit here and listen to this.

3
4 (Whereupon, Mr. Stewart leaves
5 the room.)
6

7 Q. (BY MR. ROBERSON) Has he put you
8 on routes that earned less money than the
9 Bells, Tennessee, route?

10 A. Yes, sir.

11 MR. MORTON: Object to the form.

12 Q. (BY MR. ROBERSON) Has your
13 compensation been lowered?

14 A. Yes, sir.

15 MR. MORTON: Object to the form.

16 Q. (BY MR. ROBERSON) Mr. Watson,
17 was there any salesman up there in Tennessee
18 that were over -- in the year that you sold
19 three hundred thousand dollars worth of
20 product in 2005, how old were you?

21 A. I was sixty-one years old. I was
22 sixty years old in 2005, turned sixty-one.

23 Q. Okay. Now, Mr. Morton has asked

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1 that route, that that route had ever had.

2 Q. (BY MR. ROBERSON) Did they give
3 you any explanation for why you couldn't work
4 that route in 2006.

5 A. None.

6 Q. Other than you just weren't
7 working out?

8 A. I just wasn't working out.

9 Q. And how many places have you been
10 since then? How many places have you worked?
11 Donaldsonville?

12 A. Donaldsonville, Louisiana;
13 Jasper, Alabama; and two routes in Beeville,
14 Texas.

15 Q. And every time, does it seem like
16 you're going backwards?

17 A. Every time --

18 MR. MORTON: Object to the form.

19 A. -- since I've filed that, it has
20 gone backwards.

21 MR. ROBERSON: Thank you, sir. I
22 don't have anything else.
23

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1 you a bunch of questions about facts that you
2 have, that you know about. Do you know of
3 any reason why they would have to change your
4 truck the second year you were in Bells?

5 A. None whatsoever.

6 Q. Do you know any reason that
7 prevented them from giving you a truck with
8 an air ride seat?

9 A. None whatsoever.

10 Q. Were you the oldest salesman up
11 there at Bells?

12 MR. MORTON: Object to the form.

13 A. I was the oldest salesman up
14 there.

15 Q. (BY MR. ROBERSON) Did you have
16 the most seniority?

17 A. I had --

18 MR. MORTON: Object to the form.

19 A. -- the most seniority up there.

20 Q. (BY MR. ROBERSON) Was, in fact,
21 2005 one of your best years for production?

22 MR. MORTON: Object to the form.

23 A. It was one of the best years on

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1 FURTHER EXAMINATION BY MR. MORTON.

2
3 Q. Your lawyer asked you if you had
4 ever been written up prior to your knee
5 surgery, or your surgery in the off season in
6 2005. Have you ever been written up since
7 then?

8 A. I've never been written up that I
9 know of.

10 Q. Now, your lawyer asked you some
11 questions about your --

12 A. I need to go to the restroom.
13 Can I come right back and answer?

14 Q. Sure.

15
16 (Whereupon, a brief recess was
17 taken.)
18

19 Q. (BY MR. MORTON) All right. Your
20 lawyer asked you some questions about what
21 your W-2 shows so far as your earnings are
22 concerned. You're not saying that you got
23 income from Bonnie that's not reported on the

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1 W-2 somewhere, are you?
 2 A. No, sir.
 3 Q. Now, at the time that you found
 4 out you weren't going back to Bells, you had
 5 not been cleared by your doctor to come back
 6 to work, had you?
 7 A. I had not been stopped from going
 8 back to work, and nobody told me anything
 9 about not going back to work.
 10 Q. I'm talking about your doctor.
 11 In fact, you didn't get released to go back
 12 to work, as you told me earlier, until early
 13 February, '06 without restrictions; isn't
 14 that right?
 15 A. That may be. That's probably --
 16 that may be right, but I don't ever remember
 17 being told that I couldn't go back to work.
 18 Q. Well, if you had been told you
 19 couldn't --
 20 A. I remember -- I remember them --
 21 I remember having a problem -- you know,
 22 you've got to get over your operations. And
 23 in February, he wrote me a letter saying that

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1 I was over my operations.
 2 Q. And --
 3 A. Through the whole time, I had
 4 anticipated going back to work. But that was
 5 when I got the record from my doctor, in
 6 February.
 7 Q. That was when you got something
 8 from your doctor telling you you could go
 9 back --
 10 A. Yes, sir.
 11 Q. -- to work, correct?
 12 And, in fact, prior to that time,
 13 in November and December, you had not only
 14 been unable to pass the physical
 15 rehabilitation exercises, you hadn't even
 16 been able to participate in them, correct?
 17 A. Correct.
 18 Q. And, in fact, you don't know when
 19 Leslie Branum was assigned that route in
 20 Bells, do you?
 21 A. No, sir.
 22 Q. Don't know when that decision was
 23 made --

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1 A. No, sir.
 2 Q. -- at all?
 3 And, in fact, in January of '06
 4 and up to the point that your doctor finally
 5 did release you, the company didn't have any
 6 way of knowing when you'd be able to drive,
 7 did it?
 8 A. They had no reason to believe
 9 that I wouldn't be back to work.
 10 Q. Well, they certainly knew that
 11 you hadn't been able to even --
 12 A. They knew that I hadn't --
 13 Q. -- participate?
 14 A. That's right.
 15 Q. You hadn't even been able to
 16 participate in the physical rehabilitation
 17 exercises on two different occasions,
 18 correct?
 19 A. Correct.
 20 Q. And they had nothing from your
 21 doctor releasing you to go back to work,
 22 correct?
 23 A. Correct.

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1 Q. And they didn't get anything from
 2 your doctor releasing you to go back to work
 3 until February, correct?
 4 A. Correct.
 5 Q. And prior to that time, back to
 6 my original question, they didn't have any
 7 way of knowing when you'd be able to go back
 8 to work, did they, sir?
 9 A. Correct.
 10 Q. Now, so far as Tate Gatlin is
 11 concerned, Tate Gatlin reviews the documents
 12 to take sure that you have the appropriate
 13 medical and other permissions to allow you to
 14 drive the truck --
 15 A. Yes, sir.
 16 Q. -- correct?
 17 That is his function, right?
 18 A. Yes, sir.
 19 Q. You were saying with respect to
 20 the sales in Jasper on Defendant's Exhibit 1,
 21 you don't know how those were calculated,
 22 right?
 23 A. No, sir.

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<p>1 Q. So, you don't know whether you 2 got credit for what had been sold on that 3 route before you got there or not? 4 A. No, sir. 5 Q. Now, you're talking about having 6 a long route in Texas. 7 A. Yes, sir. 8 Q. And the reason you don't want a 9 long route anymore is that it's hard on you 10 physically, correct? 11 A. Correct. 12 Q. And it's hard on you physically 13 because of your physical condition, correct? 14 A. Correct. 15 Q. And do you think it's hard on you 16 physically because of your age in addition to 17 your physical condition? 18 A. No, sir. 19 Q. Okay. So, it's your physical 20 condition that makes it hard on you to run a 21 long route, right? 22 A. I've been riding in those trucks 23 for a lot of years.</p>	<p>1 Q. And what were you told? 2 A. I was never given an answer. 3 Just somebody else had the trucks this year. 4 Q. And do you even know how trucks 5 were assigned that year at Bells? 6 A. No, sir. 7 Q. Do you know whether other people 8 had already asked for the air ride trucks? 9 A. No, sir. 10 Q. And for all you know, the trucks 11 with the air ride seats had been given out to 12 people who asked before you did, correct? 13 A. Well, I've never -- that's true. 14 Q. Okay. 15 A. I've never known anybody to 16 request a truck like that but -- 17 Q. Well, it's a lot more 18 comfortable -- 19 A. And I'm the only person that 20 knows that -- that I know that requested an 21 air ride seat. 22 Q. And the air ride seats are more 23 comfortable?</p>
Page 231	Page 233
<p>1 Q. Well, the answer to the question 2 is, yes, correct? 3 A. It is, yes. 4 Q. And, in fact, initially, when you 5 asked to get off a long route, the company 6 honored your request, correct? 7 A. Yes. 8 Q. And you were what, sixty years 9 old at that time? 10 A. Yes, sir. 11 Q. And at the age of sixty, they 12 moved you to Bells, Tennessee, at your 13 request, correct? 14 A. Yes, sir. 15 Q. And they gave you a truck with an 16 air ride suspension and an air ride seat, 17 correct? 18 A. Yes, sir. 19 Q. And you said you didn't know of 20 any reason why they couldn't give you an air 21 ride seat the second time around. But did 22 you ever ask why? 23 A. Yes, sir.</p>	<p>1 A. No, sir, it takes more shock out 2 of you when you're -- when you're hitting 3 bumps on the road. 4 Q. Smooths out the ride? 5 A. Smooths out the ride. 6 Q. You wouldn't agree that that's 7 more comfortable? 8 A. Well, some of the other seats may 9 be more where you just fall in them, you 10 know, and sit back on the cushion and be more 11 comfortable, depending on the condition of 12 the person that's sitting in the -- in the 13 seat. 14 MR. MORTON: All right. I don't 15 think I've got anything else. 16 17 FURTHER EXAMINATION BY MR. ROBERSON: 18 19 Q. Hey, Terry, did they know who 20 your doctors were at Bonnie Plant? 21 A. Yes. 22 Q. It's their insurance, right? 23 They knew every time you went to the doctor?</p>

59 (Pages 230 to 233)

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<p>1 A. They knew every time I went.</p> <p>2 Q. To your knowledge, did they seek</p> <p>3 any information about when you could return</p> <p>4 to work or with what restrictions?</p> <p>5 A. None whatsoever.</p> <p>6 Q. Okay. Well, when he says there</p> <p>7 wasn't any way for them to know, there was a</p> <p>8 way, wasn't there?</p> <p>9 MR. MORTON: Object to the form.</p> <p>10 A. There was a way. They never</p> <p>11 asked for any information about it.</p> <p>12 Q. (BY MR. ROBERSON) They could</p> <p>13 call your doctor, right?</p> <p>14 A. Right.</p> <p>15 Q. To your knowledge, they never</p> <p>16 did, did they?</p> <p>17 A. They never called --</p> <p>18 MR. MORTON: Object to the form.</p> <p>19 A. -- anybody.</p> <p>20 Q. (BY MR. ROBERSON) And this thing</p> <p>21 about your deposition and leaving work</p> <p>22 without telling them and all that stuff -- by</p> <p>23 the way, the defendant in this case is Bonnie</p>	<p>1 important, you'd think they would let</p> <p>2 somebody know, wouldn't you?</p> <p>3 A. I think Bonnie Plant Farm knew</p> <p>4 where I was going to be today.</p> <p>5 Q. Yeah. I think so, too.</p> <p>6 MR. MORTON: Object to the side</p> <p>7 bar. You don't get to make comments. Ask</p> <p>8 questions.</p> <p>9 MR. ROBERSON: I'm through.</p> <p>10</p> <p>11 FURTHER EXAMINATION BY MR. MORTON:</p> <p>12</p> <p>13 Q. You don't think, sir, that you,</p> <p>14 as an employee of Bonnie Plant Farm, have a</p> <p>15 responsibility to keep your direct supervisor</p> <p>16 informed of where you are when you're</p> <p>17 supposed to be working?</p> <p>18 A. Yes, sir, he knows where I am, as</p> <p>19 a general rule.</p> <p>20 Q. But you didn't tell him this time</p> <p>21 until two days after you'd left, correct?</p> <p>22 A. Correct.</p> <p>23 Q. And you don't know what he knows</p>
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<p>1 Plant, right?</p> <p>2 A. Right.</p> <p>3 Q. Who scheduled your deposition?</p> <p>4 A. Bonnie Plant.</p> <p>5 Q. You saw Joe Stewart. He knew you</p> <p>6 were being deposed, didn't he?</p> <p>7 A. (Witness nods head.)</p> <p>8 Q. Did he make arrangements to cover</p> <p>9 your route while you traveled here?</p> <p>10 A. No.</p> <p>11 Q. Did anybody?</p> <p>12 A. No.</p> <p>13 Q. Is it a secret that you're being</p> <p>14 deposed?</p> <p>15 A. No, it's not a secret.</p> <p>16 Q. Well, why in the world wouldn't</p> <p>17 they know? Can you think of any reason?</p> <p>18 A. None at all.</p> <p>19 Q. Okay. I can't either. I mean,</p> <p>20 if it's so important --</p> <p>21 MR. MORTON: Object to the side</p> <p>22 bar.</p> <p>23 Q. (BY MR. ROBERSON) If it's so</p>	<p>1 about this litigation, do you?</p> <p>2 A. No, sir.</p> <p>3 MR. MORTON: All right. Thank</p> <p>4 you.</p> <p>5 MR. ROBERSON: Let's go.</p> <p>6 FURTHER DEPONENT SAITH NOT.</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>

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C E R T I F I C A T E

STATE OF ALABAMA)

JEFFERSON COUNTY)

I hereby certify that the above and foregoing deposition was taken down by me in stenotype, and the questions and answers thereto were transcribed by means of computer-aided transcription, and that the foregoing represents a true and correct transcript of the testimony given by said witness upon said hearing.

I further certify that I am neither of counsel, nor of kin to the parties to the action, nor am I in anywise interested in the result of said cause.

MICHELLE L. PARVIN
Certified Court Reporter
Licence Number 126

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FREEDOM COURT REPORTING

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**DEFENDANT ALABAMA FARMERS COOPERATIVE,
INC. D/B/A BONNIE PLANT FARMS**

EX. 7

TO EVIDENTIARY SUBMISSION

EXHIBIT B

JOB DESCRIPTION

Job Title: Drivers/Salesmen

Position Summary:

The primary function of a Salesmen is to safely distribute Bonnie product to retail outlets for the sale of vegetables, herbs and flowers. It is essential to safely load, deliver and unload product in a timely manner. Bonnie racks are to be stocked and properly displayed at all times. Excellent customer service should be provided at all times.

Essential Duties & Responsibilities are:

1. Calling on customers or potential customers for the purpose of making sales and obtaining orders for Bonnie product;
2. Safely loading and securing product onto delivery truck from designated Greenhouse Stations;
3. Delivering goods pursuant to sales made and orders obtained in a safe and timely manner;
4. Unloading product from delivery truck, merchandise and properly display product on Bonnie racks in a safe and efficient manner;
5. Assisting in collecting payments for sales to non-chain store customers;
6. Safely transporting goods for sale and equipment, including: (a) safely driving the delivery truck in accordance with all traffic laws; (b) ensuring that the truck is safely and properly loaded and that goods and equipment are secure; (c) ensuring that the vehicle is in safe operating order at all time; (d) performing minor maintenance on the delivery truck to ensure safe operation;
7. Ensuring compliance with all Department of Transportation rules and regulations, including: (a) timely, fully and accurately completing the driver's daily log, (b) timely, fully and accurately performing vehicle inspections and completing associated paperwork; (c) keeping other Department of Transportation or employer-required records;
8. Supervising the Driver's Helper/Loader in the performance of his or her duties;
9. It is the Salesman's responsibility to be safe, enthusiastic, presentable and respectful to customers and your driver's helper/loader at all times. You should expect the same in return.

**DEFENDANT ALABAMA FARMERS COOPERATIVE,
INC. D/B/A BONNIE PLANT FARMS**

EX. 8

TO EVIDENTIARY SUBMISSION

DATE 19-Dec-05 BONNIE PLANT FARM
COMMISSION FOR SPRING OF 2004

NAME ARTHUR T. WATSON
S.S.# [REDACTED]
RT. NO. 18-03

		Sales	Collected	90% of Sales
SALES	FALL 2003	\$37,187.44	\$36,453.22	
	SPRING 2004	\$255,586.88	\$253,704.27	\$0.00
	TOTAL	\$292,774.32	\$290,157.49	\$263,496.89

16.00% of collected Sales	\$290,157.49	\$46,425.20
1.00% for age and years	\$0.00	\$0.00
2.00% for sales of \$300,000	\$0.00	\$0.00
2.25% for sales of \$325,000	\$0.00	\$0.00
2.50% for sales of \$350,000	\$0.00	\$0.00
2.75% for sales of \$375,000	\$0.00	\$0.00
3.00% for sales of \$400,000	\$0.00	\$0.00
3.25% for sales of \$425,000	\$0.00	\$0.00
3.50% for sales of \$450,000	\$0.00	\$0.00
3.75% for sales of \$475,000	\$0.00	\$0.00
4.00% for sales of \$500,000	\$0.00	\$0.00
4.25% for sales of \$550,000	\$0.00	\$0.00
4.50% for sales of \$600,000	\$0.00	\$0.00
5.00% for sales of \$650,000	\$0.00	\$0.00
1.00% for 4% sales increase	\$0.00	\$0.00
2.00% for 8% sales increase	\$0.00	\$0.00
3.00% for 15% sales increase	\$0.00	\$0.00
4.00% for 20% sales increase	\$0.00	\$0.00
6.00% for 30% sales increase	\$0.00	\$0.00
7.00% for 40% sales increase	\$0.00	\$0.00
8.00% for 50% sales increase	\$0.00	\$0.00
30.00% for sales collected on 94	\$4,239.54	\$1,271.86
Total		\$47,697.06

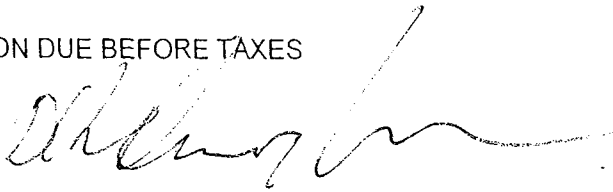
Chain Store Fines and/or Accident Fines	(\$1,000.00)
Company Assessment	(\$2,500.00)
Route Labor (can't be less than 2½ of Sales)	(\$14,083.18)
Credit Card	(\$24.24)
Misc (lumber, etc)	(\$880.00)
Racks & Signs	(\$1,550.00)

COMMISSION DUE TO DATE	\$27,659.64
Commission Already Paid	(\$26,000.00)
Commission To Be Paid Bi-Weekly	\$0.00
NET COMMISSION DUE BEFORE ADVANCE	\$1,659.64

(Taxes will be taken out of the above line)

ADVANCES	\$0.00
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COMMISSION DUE BEFORE TAXES	\$1,659.64
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**DEFENDANT ALABAMA FARMERS COOPERATIVE,
INC. D/B/A BONNIE PLANT FARMS**

EX. 9

TO EVIDENTIARY SUBMISSION

08-25-03 11:00:25 FROM: AFC Fax
 08/25/2003 10:45 3347383141

TO: 308-5650 PAYROLL FA PAGE 15
 BONNIE PLANT FARM
 PAGE 15

BONNIE PLANT FARM
 COMMISSION FOR SPRING OF 2003

AFC

DATE 22-Aug-03

NAME LUTHER L. STUART RT. NO. +18-3
 S.S.# [REDACTED]

1	SALES	\$263,171.61	\$260,000.00
2	15% of 1st \$200,000	<u>\$200,000.00</u>	\$30,000.00
3	23% of all over \$200,000	<u>\$60,000.00</u>	\$13,800.00
4	1.0% of Deliveries	<u>\$348,171.30</u>	\$3,481.71
5	1% of Sales for Yrs./Age	\$260,000.00	\$2,800.00
6	0.33% FOR A/S/P	\$0.00	\$0.00
7	-1% for less than 97% consigned (locals)		\$0.00
8	Chain Store Fines and/or Accident Fines		-\$850.00
9	TOTAL GROSS COMMISSION		\$49,031.71
10	Route Labor (can't be less than 2½ to 3½% of Sales)		-\$8,291.10
11	Misc. Labor		\$0.00
12	COMMISSION LESS LABOR		\$40,740.61
13	Company Assessment (if line 12 is over \$30,000)		-\$1,500.00
14	Credit Card		-\$1,201.73
15	Racks & Signs		-\$2,500.00
16	Misc (lumber, etc)		\$0.00
17	COMMISSION DUE TO DATE		<u>\$35,538.88</u>
18	Commission Already Paid		<u>-\$17,000.00</u>
19	Commission To Be Paid Bi-Weekly		<u>-\$13,000.00</u>
20	NET COMMISSION DUE BEFORE ADVANCE		\$5,538.88
21	ADVANCES (Taxes will be taken out of line 20)		<u>-\$3,050.00</u>
22	COMMISSION DUE BEFORE TAXES		\$2,488.88

*Paid
 8-29-03*

CONFIDENTIAL

AFC 00548

**DEFENDANT ALABAMA FARMERS COOPERATIVE,
INC. D/B/A BONNIE PLANT FARMS**

EX. 10

TO EVIDENTIARY SUBMISSION

BONNIE PLANT FARM

COMMISSION FOR SPRING OF 2005

DATE 19-Dec-05

NAME ARTHUR T. WATSON

[REDACTED]

RT. NO. 18-03--30-04

SALES FALL 2004

SPRING 2005

TOTAL

Sales

\$43,490.31

\$306,890.04

\$350,380.35

Collected

\$33,356.64

\$302,703.95

\$336,060.59

12.00% of collected Sales	\$336,060.59	\$40,327.27
1.00% for age and years	\$0.00	\$0.00
1.50% for school program	\$336,060.59	\$5,040.91
1.50% for Wal-Mart increase	\$336,060.59	\$5,040.91
1.00% for rack and sign program	\$336,060.59	\$3,360.61
1.00% for having completed 5 of 11	\$336,060.59	\$3,360.61
2.00% for \$25,000 increase collected	\$0.00	\$0.00
2.00% for sales of \$310,000	\$0.00	\$0.00
2.25% for sales of \$335,000	\$336,060.59	\$7,561.36
2.50% for sales of \$360,000	\$0.00	\$0.00
2.75% for sales of \$385,000	\$0.00	\$0.00
3.00% for sales of \$410,000	\$0.00	\$0.00
3.25% for sales of \$435,000	\$0.00	\$0.00
3.50% for sales of \$460,000	\$0.00	\$0.00
3.75% for sales of \$485,000	\$0.00	\$0.00
4.00% for sales of \$510,000	\$0.00	\$0.00
4.25% for sales of \$560,000	\$0.00	\$0.00
4.50% for sales of \$610,000	\$0.00	\$0.00
5.00% for sales of \$660,000	\$0.00	\$0.00
6.00% for sales of \$1,000,000	\$0.00	\$0.00
1.00% for 5% sales increase	\$0.00	\$0.00
2.00% for 10% sales increase	\$0.00	\$0.00
3.00% for 15% sales increase	\$336,060.59	\$10,081.82
4.00% for 20% sales increase	\$0.00	\$0.00
5.00% for 25% sales increase	\$0.00	\$0.00
6.00% for 30% sales increase	\$0.00	\$0.00
7.00% for 40% sales increase	\$0.00	\$0.00
8.00% for 50% sales increase	\$0.00	\$0.00
25.00% for sales collected on 94	\$3,533.63	\$883.41
5.00% if a 5% increase on rt. 94	\$0.00	\$0.00

Total \$75,656.89

Chain Store Fines and/or Accident Fines (\$1,800.00)

Route Labor (can't be less than 3% of Sales) (\$17,691.90)

Credit Card (\$839.57)

Misc (lumber, shirts, etc) (\$300.00)

Racks & Signs (\$2,500.00)

COMMISSION DUE TO DATE \$52,525.42

Commission Already Paid (\$25,000.00)

Commission To Be Paid Bi-Weekly (\$1,000.00)

NET COMMISSION DUE BEFORE ADVANCE (Taxes will be taken out of this line) \$26,525.42

ADVANCES (\$2,750.00)

COMMISSION DUE BEFORE TAXES \$23,775.42

**DEFENDANT ALABAMA FARMERS COOPERATIVE,
INC. D/B/A BONNIE PLANT FARMS**

EX. 11

TO EVIDENTIARY SUBMISSION

BONNIE PLANT FARM

COMMISSION FOR SPRING OF 2006

DATE 17-Mar-07

NAME LESLIE H. BRANUM

S.S.# [REDACTED]

RT. NO. 18-03

Sales

Collected

90%

SALES	SPRING 2006 TOTAL	\$383,712.44	\$378,622.05	\$345,341.20
13.00% of collected Sales			\$378,622.05	\$49,220.87
1.50% for Wal-Mart increase			\$378,622.05	\$5,679.33
1.00% for Lowe's increase			\$378,622.05	\$3,786.22
1.00% for Home Depot increase			\$378,622.05	\$3,786.22
0.50% for K-Mart increase			\$0.00	\$0.00
0.50% Non-chain stores increase			\$378,622.05	\$1,893.11
0.50% for having completed a,b,c,d,e,			\$378,622.05	\$1,893.11
2.00% for \$25,000 increase collected			\$0.00	\$0.00
2.00% for sales of \$325,000			\$0.00	\$0.00
2.50% for sales of \$360,000			\$378,622.05	\$9,465.55
3.00% for sales of \$410,000			\$0.00	\$0.00
3.50% for sales of \$460,000			\$0.00	\$0.00
4.00% for sales of \$510,000			\$0.00	\$0.00
5.00% for sales of \$660,000			\$0.00	\$0.00
1.00% for 10% sales increase			\$0.00	\$0.00
2.00% for 15% sales increase			\$378,622.05	\$7,572.44
3.00% for 20% sales increase			\$0.00	\$0.00
4.00% for 25% sales increase			\$0.00	\$0.00
6.00% for 40% sales increase			\$0.00	\$0.00
25.00% for sales collected on 94			\$765.06	\$191.27
5.00% if a 5% increase on rt. 94			\$0.00	\$0.00
Less 1% No Route 94 Customers			\$0.00	\$0.00
Less 40% not paid on Non-Chain Stores			\$3,274.43	(\$1,309.77)
Less 1% School Program Non-participation			\$0.00	\$0.00
			GROSS COMM.	\$82,178.34
Chain Store Skip Fines				(\$850.00)
DOT Fines				\$0.00
Route Labor (can't be less than 3% of Sales)				(\$12,736.85)
Credit Card				(\$62.00)
Misc (lumber, shirts, etc) shirts				(\$192.08)
Unauthorized Credit Card Charges	\$0.00		X3	\$0.00
			NET COMMISSION	\$68,337.41
Assessment				(\$7,000.00)
Commission Already Paid	DRAWN THROUGH 11-17-06			(\$57,543.77)
Commission To Be Paid Bi-Weekly	TO DRAW THROUGH 2-02-07			\$0.00
NET COMMISSION DUE BEFORE ADVANCE (Taxes will be taken out of this line)				\$3,793.64
ADVANCES				\$0.00
COMMISSION DUE BEFORE TAXES				\$3,793.64
Commission Already Paid		\$61,337.41		
Commission Accrued		\$0.00		

CONFIDENTIAL

AFC 00626

**DEFENDANT ALABAMA FARMERS COOPERATIVE,
INC. D/B/A BONNIE PLANT FARMS**

EX. 12

TO EVIDENTIARY SUBMISSION

Bonnie Plant Farm Commission for Spring c 707

Date: February 29, 2008
 Name: LESLIE H. BRANUM
 Rt. No: 18-3

	Gross Collected Sales	Net Collected Sales
Spring 2007 Total	431,228.75	405,355.03
Tiered Base		41,446.15
National Route Expense Allow		6,080.33
Total Base Commission		47,526.48

Incentives			Rate	
a) Wal-Mart/Home Depot Increase	405,355.03	X	1%	4,053.55
b) Wal-Mart/Lowe's Increase	405,355.03	X	1%	4,053.55
c) Wal-Mart/Kmart/Non-chain	405,355.03	X	1%	4,053.55
d) Sales % Increase	816.07	X	6%	48.96
e) School Cabbage Program	405,355.03	X	1%	4,053.55
f) Final Route Run	405,355.03	X	1%	2,605.85
g) Racking and Signing	405,355.03	X	2%	8,107.10
Total Incentives				26,976.12
Gross Commissions				74,502.59

Deductions				
a) 70% Rule				.00
b) Driver Helper/Labor				16,413.25
c) Credit Card/Hotel				86.96
d) Lumber				904.50
e) National Adk Exp	405,355.03	X	1.5%	6,080.33
f) Non-Chain A/R Collection				.00
g) DOT Fines				25.00
h) Skip Fines				.00
i) Credit Card Penalty				.00
Total Deductions				23,510.04

Commission Earned	50,992.56
Less: Draws Thru 9/7/07	22,500.00
Less: Draw Remainder thru 2/8/07	18,705.71
Commission Due	9,786.85
Prior Settlements	6,763.67
Collected Advances	4,800.00
Commission Remaining	3,023.18
Remaining Advances	.00

**DEFENDANT ALABAMA FARMERS COOPERATIVE,
INC. D/B/A BONNIE PLANT FARMS**

EX. 13

TO EVIDENTIARY SUBMISSION

In The Matter Of:

ARTHUR T. WATSON

v.

ALABAMA FARMERS COOPERATIVE, INC., ET AL.

NO. 2:07-CV-520-WHA

JOSEPH PADGETT

May 8, 2008



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Page 3

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CIVIL ACTION NO. 2:07-CV-520-WHA

ARTHUR T. WATSON,
Plaintiff,

vs.

ALABAMA FARMERS COOPERATIVE, INC.,
D/B/A BONNIE PLANT FARMS,
Defendants.

VIDEO DEPOSITION
OF
JOSEPH PADGETT
May 8, 2008

REPORTED BY: Eleanor S. Pickett
Certified Shorthand Reporter
and Notary Public

A P P E A R A N C E S

FOR THE PLAINTIFF:

Mr. Jerry D. Roberson
Attorney at Law
Roberson & Roberson
P.O. Box 380487
Birmingham, Alabama 35238

FOR THE DEFENDANT:

Mr. Graham Gerhardt
Attorney at Law
Burr & Forman LLP
3400 Wachovia Tower
Birmingham, Alabama 35203

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Page 4

S T I P U L A T I O N

IT IS STIPULATED AND AGREED,

by and between the parties, through their
respective counsel, that the video
deposition of JOSEPH PADGETT may be taken
before Eleanor S. Pickett, Commissioner,
Certified Shorthand Reporter and Notary
Public;

That the signature to and
reading of the deposition by the witness
is waived, the deposition to have the same
force and effect as if full compliance had
been had with all laws and rules of Court
relating to the taking of depositions;

That it shall not be necessary
for any objections to be made by counsel
to any questions, except as to form or
leading questions, and that counsel for
the parties may make objections and assign
grounds at the time of trial, or at the
time said deposition is offered in
evidence, or prior thereto.

I, Eleanor S. Pickett, a
Certified Shorthand Reporter of
Birmingham, Alabama, and a Notary Public
for the State of Alabama at Large, acting
as Commissioner, certify that on this
date, as provided by the Federal Rules of
Civil Procedure of the United States
District Court, and the foregoing
stipulation of counsel, there came before
me at the law offices of Burr & Forman
LLP, 3400 Wachovia Tower, Birmingham,
Alabama, on May 8, 2008, commencing at
12:35 p.m., JOSEPH PADGETT, witness in the
above cause, for oral examination,
whereupon the following proceedings were
had:

MR. ROBERSON: This is the
videotape deposition of Joey Padgett.
It's May 8th, 2008 and 12:35 p.m. My name
is Jerry Roberson. I'm the attorney for
the plaintiff, Arthur Watson. This case
is pending in the United States District

1 (Pages 1 to 4)

Page 5

Page 7

1 Court For the Northern District of
2 Alabama, Northern Division; and it's
3 styled Arthur T. Watson, plaintiff, versus
4 Alabama Farmers Cooperative, Inc., doing
5 business as Bonnie Plant Farms, defendant.

6 I would ask all counsel of
7 record to state their name and the party
8 they represent.

9 MR. GERHARDT: My name is
10 Graham Gerhardt. I'm with Burr & Forman,
11 appearing on behalf of the defendant.

12 MR. ROBERSON: Would you swear
13 our witness, please, ma'am?

14 JOSEPH PADGETT,
15 having been first duly sworn, was examined
16 and testified as follows:

17 THE REPORTER: Usual
18 stipulations?

19 MR. GERHARDT: Yes, ma'am.

20 MR. ROBERSON: Yes.
21
22
23

1 A. Fair enough.
2 Q. And if you answer, I'm going
3 to have to assume that you understood what
4 I was asking. So that's why I give you
5 that warning. Fair enough?

6 A. Fair enough.

7 Q. Okay. Now, what is your age,
8 sir?

9 A. Forty-six.

10 Q. And you are Joey Padgett,
11 correct?

12 A. That's correct.

13 Q. Where do you live now, Mr.
14 Padgett?

15 A. In [REDACTED]

16 Q. Okay. And where is that, sir?

17 A. In the middle of nowhere.

18 Twenty miles south or fifteen miles south
19 of Elizabethtown.

20 Q. Have you recently moved up
21 there?

22 A. Yes. Yes, I have.

23 Q. When did you move?

Page 6

Page 8

1 EXAMINATION BY MR. ROBERSON:

2 Q. Mr. Padgett, my name is Jerry
3 Roberson. I represent Terry Watson in
4 this case.

5 Have you ever given a
6 deposition before?

7 A. Yes.

8 Q. All right. So how many times?

9 A. Twice.

10 Q. And were those cases involving
11 personal matters as opposed to some
12 business of Bonnie Plant Farms?

13 A. Yes.

14 Q. Okay. So today just, so you
15 know, I'm going to be asking you
16 questions. I need you to answer out loud
17 audibly; that is, if you respond, don't
18 nod your head or say uh-huh or huh-uh,
19 okay?

20 A. Yes.

21 Q. And if you don't understand my
22 question, tell me you don't understand and
23 I'll try to rephrase it. Fair enough?

1 A. In January.

2 Q. Of 2008?

3 A. Correct.

4 Q. Where did you live before you
5 lived in [REDACTED] sir?

6 A. In [REDACTED]

7 Q. All right. And how long did
8 you live in [REDACTED]?

9 A. Moved there in '95.

10 Q. So you lived there for about
11 twelve or thirteen years?

12 A. Yes.

13 Q. And the whole time that you
14 lived there, sir, did you work for Bonnie
15 Plant Farms?

16 A. Yes.

17 Q. All right. When did you begin
18 --

19 A. No, I'm sorry, did not.

20 Q. Okay. When did you begin your
21 employment with Bonnie Plant?

22 A. In '96.

23 Q. In Jasper?

2 (Pages 5 to 8)

Page 9

1 A. Yes.
2 Q. What -- in what capacity were
3 you first employed with Bonnie Plant?
4 A. A salesman.
5 Q. A route salesman?
6 A. That's correct.
7 Q. Okay. And did you have a
8 geographical territory?
9 A. Yes.
10 Q. Where was that located?
11 A. North Alabama and North
12 Mississippi.
13 Q. And did you report to a
14 district manager or some sales supervisor?
15 A. Yes.
16 Q. What do y'all call that
17 position?
18 A. My manager --
19 Q. Station manager?
20 A. No, I didn't report to a
21 station manager. I just reported to the
22 office out of Union Springs.
23 Q. Okay. How many routes are

Page 10

1 there -- if you know, how many routes are
2 there in Alabama?
3 A. Don't know.
4 Q. Okay. How long did you work
5 as a salesman for Bonnie Plant?
6 A. Through 2007.
7 Q. Okay. And then -- as a
8 salesperson?
9 A. That's correct.
10 Q. And then in 2007 you got
11 promoted to what?
12 A. Well, I've been a salesman the
13 whole time until this year, and I've been
14 a station manager since '99.
15 Q. Okay. So you do both jobs,
16 that is --
17 A. Yes.
18 Q. -- you have your own route,
19 correct?
20 A. That's correct.
21 Q. But you also supervise other
22 salesmen as a station manager?
23 A. That's correct.

Page 11

1 Q. Okay. How many days a week do
2 you -- does it take you to run your route?
3 A. That varies.
4 Q. Okay. Well, give me a range,
5 if you can.
6 A. Well, it could take two days
7 during parts of the year, and it could
8 take three to four days during other parts
9 of the year.
10 Q. So there are some days even
11 during your busiest times when you are in
12 an office or a station; is that correct?
13 A. Yeah. I was never there every
14 day in a station. I was on my truck
15 somewhere every day.
16 Q. Okay. All right. Well --
17 A. Maybe I misunderstood your
18 question. I thought maybe you were
19 meaning just a route in general with
20 Bonnie Plant Farm.
21 Q. Well, I apologize. My
22 question may not have been clear.
23 But it sounds to me like you do

Page 12

1 two functions; that is, you run your own
2 route as a salesman, correct?
3 A. That's correct.
4 Q. But you also supervise other
5 salesmen who report to you --
6 A. That's correct.
7 Q. -- correct? Is there a
8 station for North Alabama?
9 A. There are two.
10 Q. Okay. Where is the one that
11 you supervise?
12 A. Jasper, Alabama.
13 Q. Okay. Where is the other one
14 in North Alabama?
15 A. Athens. Athens.
16 Q. Okay. Now, how many other
17 salesmen for Bonnie Plant report to you in
18 Jasper?
19 A. Two.
20 MR. GERHARDT: Jerry, let me
21 interrupt you for a second. I just want
22 to make it clear that that's not -- he's
23 not currently in Alabama.

3 (Pages 9 to 12)

Page 13

Page 15

1 MR. ROBERSON: I do understand
2 that.
3 MR. GERHARDT: Okay.
4 Q. I apologize.
5 A. That's all right.
6 Q. Up until you just moved to
7 [REDACTED] two other salesmen reported to
8 you?
9 A. Correct.
10 Q. Okay. And for 2006 that is
11 when Terry Watson worked under your
12 supervision; is that correct?
13 A. In spring of 2006.
14 Q. Okay. That's why I'm taking
15 your deposition is because he did work for
16 you, okay?
17 A. (Witness nods head
18 affirmatively.)
19 Q. Is that a yes?
20 A. Correct.
21 Q. Okay. But I understood that
22 he only worked for you for part of a
23 season, the spring season in 2006,

Page 14

1 correct?
2 A. Yes. Yes.
3 Q. Okay. Now, he replaced a
4 salesman, correct?
5 A. Yes.
6 Q. Who was that?
7 A. Thomas Heath, H-e-a-t-h.
8 Q. Did Mr. Heath change
9 locations, or did he sever his
10 relationship with Bonnie Plant?
11 A. Relationship was severed with
12 Bonnie Plants.
13 Q. Okay. Involuntarily on his
14 part?
15 A. Voluntarily on his part.
16 Q. Okay. So he resigned; is that
17 correct?
18 A. That's correct.
19 Q. Okay. Do you know where he is
20 or what he's doing now?
21 A. No, sir.
22 Q. Okay. Did that route have a
23 number, or how did you refer to it?

1 A. It was seven five zero two.
2 Q. Okay. And how many stores
3 were on that route, approximately?
4 A. Approximately, forty.
5 Q. And can you tell me some of
6 the cities that that route served?
7 A. Columbus, Mississippi; Amory,
8 Mississippi; Winfield, Alabama. I can
9 tell you a bunch of them if you want.
10 Fayette, Alabama; Haleyville, Alabama.
11 Q. That's where I'm from, sir.
12 A. Is that right?
13 Q. Uh-huh.
14 A. Sulligent, Vernon, Millport,
15 luka, Mississippi; Golden, Mississippi;
16 and numerous others.
17 Q. Okay. Well, it sounds to me
18 like, and I'm -- don't let me put words in
19 your mouth, but it sounds to me like there
20 would be numerous smaller stores on that
21 route because this isn't -- you hadn't
22 identified any what I would call major
23 metropolitan area, correct?

Page 16

1 MR. GERHARDT: Object to the
2 form.
3 A. I had several real good
4 accounts over there.
5 Q. Okay. You can have a good
6 account in a small town?
7 A. Yeah.
8 Q. Sure. But what I'm saying is,
9 you didn't -- you didn't have any large
10 cities that were served on that route. Is
11 that fair?
12 A. I would say the Columbus area
13 was more populated than any of the rest of
14 it, yeah.
15 Q. Okay. Well, I'm from
16 Haleyville, and there ain't five thousand
17 people in Haleyville.
18 A. A lot of big gardeners.
19 Q. Well, what store did you have,
20 Wal-Mart?
21 A. We had the Wal-Mart and
22 Winston County Co-op.
23 Q. Okay. And would that pretty

4 (Pages 13 to 16)

Page 17

Page 19

1 much be you would -- if this -- if these
2 cities had a Wal-Mart, then that would be
3 on the route? And then if they had a
4 farmers co-op, that would be on the route?
5 A. (Witness nods head
6 affirmatively.)
7 Q. And possibly if they had some
8 other independent smaller store, they
9 could be serviced too?
10 A. That's correct.
11 Q. Okay. I mean, I'm just trying
12 to get the lay of the land.
13 Okay. Now, how long did Mr.
14 Heath work there as a route salesman for
15 you?
16 A. (No response.)
17 Q. Did he work in the spring of
18 2005?
19 A. Yes.
20 Q. So he worked that same route?
21 A. That's correct.
22 Q. The whole year?
23 A. The whole year. I would say

1 Q. I still got to take the
2 deposition of Joe Stewart.
3 A. Uh-huh.
4 Q. Would he have access to those
5 records?
6 A. I'm sure he would.
7 Q. Okay. In fact, is he your
8 boss or somebody that you reported to?
9 A. In a roundabout way, but not
10 directly, no.
11 Q. Who was your direct
12 supervisor?
13 A. Dennis Thomas.
14 Q. And what's his position?
15 A. President of Bonnie Plant
16 Farm, general manager.
17 Q. Is he in Union Springs?
18 A. Yes, sir.
19 Q. Now, has any of that changed
20 since you've gone to Kentucky this year?
21 A. Not really, no.
22 Q. Okay. You still report to
23 him?

Page 18

Page 20

1 he worked two to three years --
2 Q. All right.
3 A. -- prior to -- prior to that
4 year.
5 Q. Do you or does Bonnie Plant
6 keep a file, a personnel file, on every
7 salesman?
8 A. I don't personally, no.
9 Q. Okay. But there are records
10 that show how long he worked there?
11 A. Sure.
12 Q. And would also show his
13 commissions, his sales?
14 A. That would be correct.
15 Q. Okay. Do you know where those
16 are located or how I could obtain those?
17 A. In Union Springs, Alabama.
18 Q. Okay. Under whose control are
19 they?
20 A. That, I wouldn't know.
21 It's -- I mean, we could just call the
22 office and ask for whatever, you know.
23 What exact person, I wouldn't know.

1 A. That's correct.
2 Q. Okay. And how many folks are
3 you supervising now?
4 A. In the neighborhood of
5 forty-eight.
6 Q. Okay. How many of them are
7 route salesmen?
8 A. Nine.
9 Q. I hope they gave you a raise.
10 A. I hope to earn one.
11 Q. Okay. Do you still run a
12 route --
13 A. No.
14 Q. -- in Kentucky? It's just a
15 supervisory position now?
16 A. That's correct.
17 Q. Okay. But a station manager
18 has to supervise people who actually grow
19 the plants too, correct?
20 A. He's also a grower.
21 Q. That's right.
22 A. He is the grower.
23 Q. Okay. So he has to provide

5 (Pages 17 to 20)

Page 21

Page 23

1 the plants to be sold, is that a fair
2 statement?
3 A. Correct.
4 Q. All right. And -- well, I
5 want to talk to you about the time that
6 you supervised Terry Watson, okay? Did
7 you know him before he came to your
8 supervision?
9 A. No.
10 Q. Okay. Had -- who made the
11 decision to send Terry to Jasper?
12 MR. GERHARDT: Object to the
13 form.
14 Q. You can answer.
15 A. I called Union Springs and
16 told them that my route man had quit, that
17 I needed somebody.
18 Q. Okay. Who did you talk to?
19 A. Kyle Currington. A couple
20 three days later Kyle called and said he
21 could send Terry Watson.
22 Q. Okay. Did you ever talk to
23 Joe Stewart about Terry?

1 Q. Okay. Was that true that his
2 truck had broken down?
3 A. Yeah.
4 Q. Okay.
5 A. Yeah.
6 Q. So you went physically and got
7 him, to Hattiesburg, Mississippi?
8 A. Yes, sir.
9 Q. Okay. And he worked for you
10 from what date; starting what date, if you
11 know?
12 A. Sometime the week after Good
13 Friday of '06 until we finished out the
14 year.
15 Q. Okay. When is Good Friday?
16 A. Changes every year.
17 Q. I know. What month does it
18 occur in?
19 A. Either March or April.
20 Q. Okay. The end of March or the
21 beginning of April; is that correct?
22 A. It would fall somewhere in
23 that range.

Page 22

Page 24

1 A. No, don't think I did, not
2 that I recall.
3 Q. Then Terry arrived at your
4 location?
5 A. No, sir.
6 Q. Okay. What happened?
7 A. I had to go and get him.
8 Q. Where did you go?
9 A. Hattiesburg, Mississippi.
10 Q. Okay. When you say "you had
11 to go get him," sounds like he wasn't
12 coming.
13 A. No, he was in a motel room
14 there for about a week and couldn't seem
15 to get any further. So I went --
16 Q. He didn't have transportation?
17 I don't know what you are telling me.
18 A. He was in a truck, and he said
19 his truck broke down.
20 Q. Oh.
21 A. And instead of getting a bus
22 or something to get on up there to go to
23 work, he just stayed there.

1 Q. Okay. We'll I'm just
2 trying --
3 A. That particular year, I really
4 can't say without a calendar in front of
5 me when it was.
6 Q. Okay. Well, I'm just trying
7 to ascertain when he was physically in
8 Jasper.
9 A. Okay.
10 Q. So sometime at the end of
11 March of '06?
12 A. Right. Or the first of April.
13 Q. And he worked -- what do y'all
14 consider the spring season, until what
15 date, July or sometime?
16 A. Sometime around the 4th of
17 July.
18 Q. Okay. And when does your
19 spring season start in Jasper; that is,
20 when do the route salesmen begin their
21 routes?
22 A. I have started as early as
23 December.

6 (Pages 21 to 24)

Page 25

Page 27

1 Q. When did you start in 2006?
 2 A. It would be safe to say the
 3 first week or so of January.
 4 Q. Okay. So is it fair to say
 5 that he missed a substantial portion of
 6 that season, that is, he wasn't assigned
 7 to that route?
 8 A. That would be correct.
 9 Q. Okay. During that period of
 10 time until Terry got there, was Mr. Heath
 11 working the route?
 12 A. Yes, sir.
 13 Q. Okay. And do you know when he
 14 resigned; that is, the date of his
 15 resignation?
 16 A. Somewhere around Good Friday
 17 of '06.
 18 Q. Okay. So you weren't without
 19 a salesman for long?
 20 A. About a week.
 21 Q. Okay. Now, I'm going to show
 22 you -- this was marked as Defendant's
 23 Exhibit 1 to Terry Watson's deposition.

Page 26

1 It's a commission statement for him for
 2 the spring of 2006. And this is Bonnie's
 3 document, so I would ask for your help in
 4 interpreting it, okay?
 5 Now, does that document
 6 indicate the sales on the route for both
 7 Mr. Heath and for Mr. Watson?
 8 A. It could possibly.
 9 Q. What were the sales on this
 10 route for 2006, the spring season?
 11 A. I wouldn't know off the top of
 12 my head. I wouldn't recall.
 13 Q. Well, doesn't it show there?
 14 A. Well, I don't know whether
 15 this is just for that period --
 16 Q. That he worked?
 17 A. -- that he was there or
 18 whether this is for -- see, this could
 19 be -- I put out plants for over a week on
 20 that route myself after Heath had quit.
 21 This could include sales from that week.
 22 It could include sales from the week that
 23 Heath worked where plants were delivered

1 but not yet sold until Watson got there.
 2 Q. Okay. Who would know what
 3 that -- what those figures represent, sir?
 4 A. Someone in the sales office in
 5 Union Springs.
 6 Q. Can you give me a name?
 7 A. Dennis Thomas, Kyle
 8 Currington.
 9 Q. What is Kyle's job?
 10 A. He's the -- he's vice
 11 president or -- under the general manager,
 12 whatever is next.
 13 Q. Okay. All right. Well, do
 14 you know what the sales on that -- I'm
 15 sure I'm taxing your memory, but do you
 16 know what the sales were on that route for
 17 2005 when Mr. Heath had it?
 18 A. No, sir.
 19 Q. Do you know if they were more
 20 or less than what is listed on that
 21 document?
 22 A. I wouldn't remember.
 23 Q. Okay. What about now? Terry

Page 28

1 Watson worked that route only in 2006,
 2 right?
 3 A. For partial of 2006.
 4 Q. Right. Correct. Who's on the
 5 route now?
 6 A. I wouldn't know.
 7 Q. So after Terry left, that's
 8 when you got reassigned to Kentucky?
 9 A. No, I didn't get reassigned
 10 until this year. But there is a new
 11 manager there, and he has new people.
 12 Q. Okay. For 2007, you didn't
 13 hold the job as a route salesman and
 14 station manager in Jasper?
 15 A. Yes, I did.
 16 Q. But that route was assigned to
 17 somebody else?
 18 A. In 2007, I assigned Chris
 19 Sparks to this route.
 20 Q. Okay. Is he still there?
 21 A. He's still there, but I don't
 22 think he's on this same route.
 23 Q. Okay. Did he work the route

7 (Pages 25 to 28)

Page 29

Page 31

1 in 2007?
2 A. Yes.
3 Q. Is it under your supervision?
4 A. Yes.
5 Q. Do you know what his sales
6 were?
7 A. I think they were twenty to
8 thirty thousand dollars more than the '06
9 total.
10 Q. Okay. All right. And is
11 Chris -- I'm sorry, I may have asked you
12 this, but is Chris still working on that
13 route?
14 A. He still works out of Jasper
15 station. I don't know which route.
16 Q. Which number he's on, you
17 don't know?
18 A. Right. Right.
19 Q. Who is the station manager in
20 Jasper now?
21 A. Heath Davis. No relation to
22 the last name of the prior Heath.
23 Q. Hey, have you ever eaten at

1 Q. Do you know where I could
2 obtain any written complaint about Terry
3 Watson's job performance?
4 A. Not from me, no, huh-uh.
5 Q. Well, you didn't keep them?
6 A. I gave them to him.
7 Q. You gave them to him?
8 A. Uh-huh.
9 Q. Is that correct?
10 A. That would be correct.
11 Q. Can you remember any customer
12 who made a written complaint, Mr. Padgett?
13 A. They were telephone
14 complaints. They call our office. We
15 write it down on a telephone pad, tear it
16 off and put it on their file.
17 Q. Okay. Well, they would say
18 things like "we're out of something"?
19 A. Right.
20 Q. Or --
21 A. "Need plants, hadn't seen my
22 salesman in a week, out of tomato plants."
23 Q. Have you ever -- other than

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Page 32

1 the Green Top Barbecue?
2 A. A few times.
3 Q. Have you ever eaten any better
4 barbecue?
5 A. Uh-huh.
6 Q. Okay.
7 A. It's good.
8 Q. After this deposition, though,
9 you can tell me where you ate that was
10 better.
11 A. All right.
12 Q. Now, during the time that
13 Terry worked under your supervision from
14 late March or early April until July, did
15 you have any criticism of his job
16 performance?
17 A. I had a lot of customer
18 complaints on him not getting around the
19 route.
20 Q. Okay. Were any of those
21 complaints in writing?
22 A. I'm sure some of them at the
23 time were, yeah.

1 Terry Watson, has that ever occurred in --
2 since 1999 since you've been a station
3 manager, have you ever had a customer
4 complaint on any other salesman?
5 A. Not to that volume, no.
6 Q. Oh, I see. Has it ever
7 occurred before that somebody has called
8 and said they're out of something; "I
9 don't know where my salesman is, but I'm
10 out of a product"?
11 A. Sure. We hope they're selling
12 them. We don't want them to stay there on
13 the shelf.
14 Q. That's the point, isn't it?
15 A. Uh-huh. But we need to get
16 back there with some more so we can
17 continue selling them.
18 Q. Okay. Well, any other
19 criticism of Mr. Watson's job performance
20 while he worked under your supervision
21 those few months?
22 A. It all boils down to what
23 you're selling. You know, you got to get

8 (Pages 29 to 32)

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1 them there to sell them. That's it in a
2 nutshell.
3 Q. I understand. In the time
4 that he worked for you, did you ever have
5 an occasion to write him up, reprimand him
6 in writing for any area of his job
7 performance?
8 A. Didn't have the opportunity in
9 writing, no, sir.
10 Q. Well, you certainly had the
11 opportunity, but you never availed
12 yourself of that opportunity, correct?
13 MR. GERHARDT: Object to the
14 form.
15 Q. Correct?
16 A. Incorrect.
17 Q. Okay. Why didn't you have the
18 opportunity to write him up?
19 A. They were written and already
20 put in his file every time a customer
21 calls. You know, that's kind of a
22 personal -- you know, I take it personal
23 if a store of mine doesn't have product to

Page 34

1 sell because I'm paid on what he sells, so
2 I get back there with more product.
3 Q. Mr. Padgett, do y'all have
4 forms where you can discipline an employee
5 at Bonnie Plant?
6 A. I'm sure there are.
7 Q. Do you have access to them?
8 A. Yes, sir.
9 Q. Do you have a -- what is the
10 extent of your education, sir?
11 A. In what form --
12 Q. Have you completed high
13 school?
14 A. -- formally?
15 Q. Yes, sir.
16 A. Yes, sir, I completed high
17 school.
18 Q. Did you attend college?
19 A. I did.
20 Q. Did you graduate?
21 A. No, sir, I didn't.
22 Q. How many years of college have
23 you got?

1 A. Two years.
2 Q. You are able to read and write
3 the English language is my point.
4 A. I would hope so.
5 Q. Okay. You know how to write
6 someone up if their job performance is
7 unsatisfactory, correct?
8 MR. GERHARDT: Object to the
9 form.
10 Q. You can answer.
11 A. (No response.)
12 Q. Sir?
13 A. I -- I pass the notes on to
14 him.
15 Q. Have you ever written up Terry
16 Watson?
17 A. Oh, no, sir. I answered that
18 question.
19 Q. Have you ever written up any
20 other employee?
21 A. Yes, sir.
22 Q. For what?
23 A. Loading product that they

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1 shouldn't have loaded.
2 Q. So you have disciplined
3 employees in writing; you know how to do
4 that, right?
5 A. On one occasion I have.
6 Q. Did you get them to sign and
7 acknowledge their job performance was
8 deficient?
9 A. That, I did.
10 Q. Why did you do that?
11 A. Situation mandated it.
12 Q. In fact, it's important to
13 manage an employee that they be made aware
14 and made to acknowledge that their
15 performance, prior performance has been
16 unsatisfactory, correct?
17 MR. GERHARDT: Object to the
18 form.
19 A. Mr. Watson was notified that
20 his stores were out of plants in writing
21 numerous occasions, daily.
22 Q. Sir, employees have to know
23 what the expectations are of management,

9 (Pages 33 to 36)

Page 37

1 correct?
2 MR. GERHARDT: Object to the
3 form.
4 Q. Correct?
5 A. Don't really understand your
6 question.
7 Q. You can't do your job until
8 you know what your job is, correct?
9 A. Oh, Mr. Watson was not a new
10 employee. He knew what his job was. I
11 think he had been working -- I didn't know
12 his past, but I think he had been there
13 for several years.
14 Q. He had been working over
15 twenty-five years, and he was sixty-two
16 years of age, correct?
17 A. Don't really know how old he
18 is.
19 Q. How old are you?
20 A. Forty-six.
21 Q. Did he appear to be
22 substantially older than you?
23 MR. GERHARDT: Object to the

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1 form.
2 A. I can't tell how old anybody
3 is these days.
4 Q. I see. Well, have you ever
5 worked anywhere besides Bonnie Plant?
6 A. Smith Plant Farm.
7 Q. Where are they?
8 A. Union Springs.
9 Q. Have they been bought by
10 Bonnie?
11 A. They kind of merged.
12 Q. What did you do for them?
13 A. Sold plants.
14 Q. Did you ever do any management
15 for them?
16 A. Yes, I did.
17 Q. Did you ever write up anybody
18 while you were at Smith Plant Farms?
19 A. No, sir, I didn't.
20 Q. So you've been -- how long
21 have you been in the plant business?
22 A. Twenty-eight years.
23 Q. And in those twenty-eight

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1 years, you've only written up one person?
2 A. That's correct.
3 Q. All right. Is he still with
4 the company?
5 A. Left voluntarily. I think we
6 covered that.
7 Q. Okay. Did you put the
8 write-up in his personnel file?
9 A. I sent it to who is supposed
10 to do that.
11 Q. Why did you do that?
12 A. That's what it says to do.
13 Q. That's right. Because
14 sometimes you may have -- he may not be
15 working for you, may be working for
16 somebody else, correct?
17 A. I don't know if he's working
18 or not.
19 Q. So whatever problem you
20 contend Terry Watson created by failing to
21 service your accounts, it wasn't so
22 serious that you had to write him up,
23 correct?

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1 MR. GERHARDT: Object to the
2 form.
3 A. I sell plants. My plants are
4 going to be sold. If he doesn't sell
5 them, it costs him money. I'm going to
6 sell them. So he cost himself money by
7 not servicing his customers.
8 Q. Sir, I'm not going to be very
9 long with you, but I would appreciate it
10 if you would listen to my question and
11 answer my question. And my question was:
12 Whatever problem Terry Watson had, you
13 didn't think it was so serious as to
14 require you to initiate formal written
15 discipline, correct?
16 MR. GERHARDT: Object to the
17 form.
18 A. I think I've stated I have not
19 written up Terry Watson.
20 Q. And you know how?
21 A. I passed along customer
22 complaints. I can write up somebody if
23 they need it.

10 (Pages 37 to 40)

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1 Q. Okay. And that's the point.
2 A. Sure.
3 Q. You didn't think he needed it,
4 correct?
5 MR. GERHARDT: Object to the
6 form.
7 A. Passed along -- he missed his
8 commissions on his own, not on anything I
9 did.
10 Q. If you had thought he had
11 needed it, you would have written him up,
12 though, correct?
13 A. My point is, I'm going to sell
14 the plants to somebody. If he doesn't get
15 his share, that's his problem. That's his
16 issue.
17 Q. Now, did anybody ever tell you
18 that Terry Watson had complained of age
19 discrimination before he was sent to work
20 for you?
21 A. No, sir.
22 Q. You were unaware of his prior
23 complaint, correct?

1 A. He was just filling in that
2 position because the salesman had quit.
3 Q. Well, who made the decision
4 for him to fill in?
5 A. I guess someone out of Union
6 Springs.
7 Q. Well, did you hire someone?
8 A. No. The year ended. He
9 finished out the year.
10 Q. Right. And then did you hire
11 someone, a permanent replacement?
12 A. Oh, yes, sir.
13 Q. Who did you hire?
14 A. Chris Sparks.
15 Q. Why did you hire him when you
16 already had Terry Watson?
17 MR. GERHARDT: Object to the
18 form.
19 Q. You can answer.
20 A. I didn't hire Terry Watson.
21 Q. How old is Chris Sparks?
22 A. Probably forty-eight. My age
23 or a little bit older.

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1 A. That's correct.
2 Q. Do you know where he had
3 worked before?
4 A. With Bonnie Plant Farm.
5 Q. Do you know what locations?
6 A. No, sir.
7 Q. Let me show you what were
8 marked as Exhibits 4 and 5 to his
9 deposition and ask you if you've ever seen
10 either of those documents?
11 A. I've never seen these two
12 documents.
13 Q. Has anybody ever informed you
14 about those two documents before?
15 A. Not before today, no, sir.
16 Q. Why did Terry Watson transfer
17 from under your supervision? Did you
18 request that he be transferred?
19 A. Oh, no, sir.
20 Q. Do you know why he was
21 transferred?
22 A. He was never hired by me.
23 Q. What was he doing?

1 Q. Well, since Mr. Watson
2 finished out the season with you, have you
3 had any occasion to see him?
4 A. I have.
5 Q. Where?
6 A. At different sales meetings
7 that we've had with Bonnie.
8 Q. Okay. You mean the annual
9 meeting where all the salesmen get
10 together?
11 A. Well, we have two. And the
12 annual meeting I guess you'd consider
13 would be the Florida trip, and I don't
14 think I've seen him there.
15 Q. Okay. What other meetings do
16 y'all have?
17 A. We have some sales meetings
18 down in Auburn.
19 Q. What do you call those?
20 A. Sales meetings.
21 Q. And so you saw him at that
22 meeting?
23 A. Uh-huh, yes, sir.

11 (Pages 41 to 44)

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1 Q. Did you speak to him?
2 A. Yeah. Sure.
3 Q. What did you tell him, do you
4 recall?
5 A. How you doing.
6 Q. Just small talk?
7 A. Just small talk, yeah.
8 Q. Sure. All right. Did Terry
9 Watson work under any kind of restriction
10 while he worked under your supervision,
11 that is, health restriction? Did he have
12 any limitations?
13 MR. GERHARDT: Object to the
14 form.
15 Q. You can answer.
16 A. In what form? I don't really
17 understand your question.
18 Q. Is there anything he couldn't
19 do?
20 A. I don't know what he couldn't
21 do, but he didn't load his truck, and he
22 didn't unload his truck.
23 Q. Did he have a helper?

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1 A. He had three of my people.
2 One helper off another truck and two of my
3 greenhouse workers.
4 Q. Did he have a helper that went
5 with him on his route?
6 A. He didn't come with a helper.
7 He said he had one, but the guy never
8 showed. His last name was Coon, C-o-o-n.
9 Q. When he worked under your
10 supervision, was there someone who rode
11 with him on his truck?
12 A. Sure, yeah, those three
13 helpers.
14 Q. Three people rode with him on
15 his truck?
16 A. At times there were three
17 people in there with him.
18 Q. And who would those three
19 people have been?
20 A. I don't recall their names.
21 Q. Why would you need three
22 people on a truck to help you load and
23 unload?

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1 A. I don't -- I don't know.
2 Q. Can you think of any reason
3 why --
4 A. You just don't do it yourself.
5 You would rather pay other people to do
6 it, I guess. Doesn't make sense.
7 Q. I see. Do you know what the
8 sales goal was for that route in 2006?
9 A. There wasn't one with Terry.
10 Q. Did he receive any commissions
11 in 2006?
12 A. I'm sure he did. According to
13 this sheet, if this was his pay sheet for
14 that year, yes, he did. Was overpaid.
15 Q. That means his draw exceeded
16 his commissions, doesn't it?
17 A. That's correct.
18 Q. And why did Mr. Heath resign?
19 A. You'd have to ask Mr. Heath
20 that.
21 Q. He didn't have a conversation
22 with you?
23 A. He said "I quit."

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1 Q. He didn't tell you why?
2 A. No, he didn't.
3 Q. Did you ask him?
4 A. No, I didn't.
5 Q. Did you want him to quit?
6 A. I didn't try to beg him to
7 stay.
8 Q. He really wasn't getting the
9 job done, was he?
10 A. Not to my satisfaction, no.
11 Q. Okay.
12 A. No.
13 MR. ROBERSON: We'll go off
14 the record for just a minute. The court
15 reporter has a problem. We are going off
16 the record at 1:10.
17 (Whereupon, a break was had
18 from 1:10 p.m. until 1:12 p.m.)
19 MR. ROBERSON: All right. We
20 are back on the record at 1:12.
21 Q. Mr. Padgett, this is the only
22 time I get to talk to you before our trial
23 if we have a trial in this case. I just

12 (Pages 45 to 48)

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1 ask you to tell me anything you know about
2 Terry Watson, my client. If you know
3 anything negative about him, I'm just
4 asking you to tell me today so I don't
5 hear it for the first time at the trial,
6 okay? Do you understand my question?

7 A. Yes.

8 Q. You tell me -- you've already
9 told me that you had customer complaints
10 that he wasn't visiting their stores
11 frequently enough and he -- and they were
12 out of product at times, correct?

13 A. Correct.

14 Q. All right. Is there anything
15 else negative -- you also told me that he
16 had three people that worked on his truck?

17 A. Up to three.

18 Q. Okay. Is there anything else,
19 any other criticism or anything bad that
20 you want to say about Terry Watson? I'm
21 just asking you to tell me now and not
22 later, okay?

23 A. No, it's all about the sales.

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1 I mean, if he -- if his sales would have
2 been up, no customers complaining -- you
3 know, it's a difference when you get a
4 call and they say "I'm out of plants.
5 I've sold them all this morning. My guy
6 left me some yesterday." I don't have an
7 issue with that.

8 Q. Sure.

9 A. But when you've got a customer
10 that calls like Winston County Co-Op in
11 Haleyville and says, "We haven't seen our
12 salesman in six days," I have an issue
13 with that.

14 Q. Okay. Well, during the few
15 months that he worked for you, can you say
16 anything positive about him?

17 A. Terry is a real likable guy.
18 I mean, I called him last year even
19 though, you know, he wasn't working for
20 me. I knew he was on another truck. "How
21 are you doing, Terry," scrolling through
22 my numbers and saw it, you know. We had
23 about a quick three minute chat.

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1 MR. ROBERSON: All right. I
2 don't think I've got anything else. Mr.
3 Gerhardt, do you have any questions?

4 MR. GERHARDT: I don't have
5 any questions either.

6 MR. ROBERSON: Well, then,
7 that will conclude the deposition of Mr.
8 Padgett at 1:15. Thank you, sir.

9
10 FURTHER THE DEPONENT SAITH NOT
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1 C E R T I F I C A T E

2
3
4 STATE OF ALABAMA)
5 JEFFERSON COUNTY)
6

7 I hereby certify that the
8 above and foregoing deposition was taken
9 down by me in stenotypy, and the questions
10 and answers thereto were reduced to
11 typewriting under my supervision, and that
12 the foregoing represents a true and
13 correct transcript of the deposition given
14 by said witness upon said hearing.

15 I further certify that I am
16 neither of counsel nor of kin to the
17 parties to the action, nor am I in anywise
18 interested in the result of said cause.
19
20
21
22
23

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ACCR LICENSE NO. 278

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**DEFENDANT ALABAMA FARMERS COOPERATIVE,
INC. D/B/A BONNIE PLANT FARMS**

EX. 14

TO EVIDENTIARY SUBMISSION

January 10, 2006

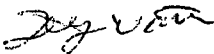
Dear Tate;

As you know I have worked for Bonnie as a route salesman for 15 years. I have only had two routes the whole time I worked here. I was involved in an accident on the job in December, 2002 and suffered some back and neck problems. I have continued to work and do my job. I increased my route sales and made every incentive bonus the company offered last year. I have always enjoyed my job and tried to do it to the best of my ability.

I cannot understand why my Tennessee route is being given to some one else, unless it is because I turn 61 years old on January 12, 2006. I was able to do my job last year and now I am being told that I cannot perform my job. Actually my health is better now than the last two years. I have lost 40 pounds and had a bad right knee replaced.

I love my job and all I want is to continue to do a good job. I need my job and my health insurance. Please don't take my job away from me.

Terry Watson



**DEFENDANT ALABAMA FARMERS COOPERATIVE,
INC. D/B/A BONNIE PLANT FARMS**

EX. 15

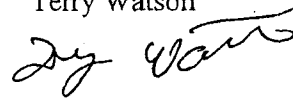
TO EVIDENTIARY SUBMISSION

February 2, 2006

Dear Tate;

I brought you a letter on January 10, 2006 which you have not responded to yet. I am bringing you a letter today from my doctor saying I am able to work without restrictions. I am ready, willing and able to go to work. Please put me to work on my Tennessee route. If you do not put me to work, I am going to find a lawyer because I believe you are discriminating against me because of my age.

Terry Watson



cc: Joe Stewart

**DEFENDANT ALABAMA FARMERS COOPERATIVE,
INC. D/B/A BONNIE PLANT FARMS**

EX. 16

TO EVIDENTIARY SUBMISSION

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

ARTHUR T. WATSON,

Plaintiff,

v.

**ALABAMA FARMERS COOPERATIVE, INC.,
d/b/a BONNIE PLANT FARMS**

Defendant.

)
)
)
)
) **CIVIL ACTION NO. CV-2007-520-WHA**
)
)
)
)

DECLARATION OF TINA JOHNSON

I, Tina Johnson, hereby declare and state the following:

1. I am the Vice President, Human Resources for Alabama Farmers Cooperative, Inc. ("AFC"). Bonnie Plant Farms is a division of AFC.
2. As part of my job duties, I maintain the employment records of AFC, including the employment records of Bonnie Plant Farms.
3. Since January 1, 2005, Bonnie Plant Farms has hired 49 route salesmen who, at the time they were hired, were 50 years of age or older.
3. I declare under penalty of perjury that the foregoing is true and correct.

Further declarant saith not.

Date: 6-23-08

Tina Johnson
Tina Johnson

**DEFENDANT ALABAMA FARMERS COOPERATIVE,
INC. D/B/A BONNIE PLANT FARMS**

EX. 17

TO EVIDENTIARY SUBMISSION

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.

AGENCY

CHARGE NUMBER

☐ FEPA
☒ EEOC

420-2006-03095

and EEOC

State or local Agency, if any

NAME (Indicate Mr., Ms., Mrs.)

Mr. Arthur Terrell Watson

HOME TELEPHONE (Include Area Code)

STREET ADDRESS

CITY, STATE AND ZIP CODE

DATE OF BIRTH

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME

Bonnie Plant Farms, a division of
AFC, Inc.

NUMBER OF EMPLOYEES, MEMBERS

Over 300

TELEPHONE (Include Area Code)

(334) 738-3102

STREET ADDRESS

1727 Highway 223

CITY, STATE AND ZIP CODE

Union Springs, Alabama 36089

COUNTY

Bullock

NAME

TELEPHONE NUMBER (Include Area Code)

STREET ADDRESS

CITY, STATE AND ZIP CODE

COUNTY

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))

☐ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☒ AGE
☐ RETALIATION ☐ NATIONAL ORIGIN ☐ DISABILITY ☐ OTHER (Specify)
DATE DISCRIMINATION TOOK PLACE
EARLIEST (ADEA/EPA) LATEST (ALL)

January, 2006 through today

☒ CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

See Attachment A

RECEIVED

JUN 6 2006

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - (When necessary for State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Arthur Terrell Watson

SIGNATURE OF COMPLAINANT

Arthur Terrell Watson

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE

(Day, month, and year)

6/2/06

Date

Charging Party (Signature)

EEOC FORM 5 (10/94)

EXHIBIT A
CHARGE OF DISCRIMINATION

I have worked for a route salesman for Bonnie Plant Farms for fifteen (15) years. I have only had two routes assigned to me before January of 2006.

The route I was working in 2005 was in Bells, Tennessee. I developed that territory into a very lucrative route as I increased my business every year that I worked it. I underwent surgery to have my knee replaced and I lost 40 lbs.

When I returned in January of 2006, I was not put back to work. I brought my supervisor, Tate, this letter dated January 10, 2006. In it I complained of age discrimination. (See *Exhibit 1*). On February 2, 2006, I brought Tate another letter stating that I was released to return to work without restrictions. (*Exhibit 2*). I requested to be reassigned to my Tennessee route. I was not assigned to that route, but was given another route in Donaldsonville, Louisiana. I believe this assignment was made in retaliation for my complaint of age discrimination.

The Louisiana route was salary only. I made \$500.00 a week. I had made \$45,000.00 in Tennessee. I have increased the sales on my Louisiana route, but I still will make substantially less than on my Tennessee route. Now I have recently been assigned another route in the Jasper, Alabama. I continue to be assigned to routes where I do not have as much opportunity to succeed financially.

I believe I have been discriminated against because of my age sixty-one (61), in violation of the Age Discrimination and Employment act (ADEA), as amended. I also believe I have been retaliated against because of my complaints of age discrimination.

Arthur Znell Watson
6-2-06

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